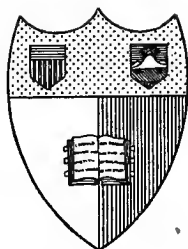


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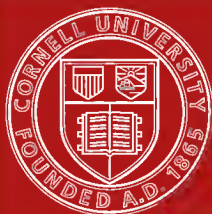
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Henry W. Sackett 1898.

THE ORDER OF THE COIF.

NOTE BY THE PUBLISHERS.

THE original edition of this exhaustive chronicle of the antiquity and dignity of the degree of Serjeant-at-law being out of print, the Publishers have re-issued it, believing that not only the legal profession, but the public generally, will appreciate this opportunity of acquiring so interesting and learned a work in a cheaper form.



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THE
ORDER OF THE COIF.

BY
ALEXANDER PULLING,
SERJEANT-AT-LAW.

THE BOSTON BOOK CO.,
CHAS. C. SOULE, PRES.,
FREEMAN PLACE CHAPEL,
BOSTON, MASS.

1897.

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PREFACE.

THE subject of this work has been foreshadowed in the article under the same title in the 'Edinburgh Review' for October, 1878.

It has been long projected; the time has arrived when it is required. In this country we have neither a history of the Bench or the Bar, and the Order of the Coif was the first phase of both. Until a comparatively recent time it included the greater portion of the Judges and Lawyers of England.

Dugdale, Fortescue, Coke, and Blackstone give us accounts of the Serjeants-at-law and of the Inns of Court. Serjeant Wynne's tract, published in 1765, entitled 'Observations touching the Antiquity and Dignity of the Degree of Serjeant-at-law,' is the result of very useful researches on the subject before us. In the first Report of the Common Law Commissioners the subject of Serjeants' Inn and the Inns of Court is minutely entered on; and in the "Serjeants' Case," arising out of the so-called mandate from the Crown issued to the Judges of the Common Pleas in 1834, we find in the various arguments of Sir William Follett, Serjeant Wilde, Sir John Campbell (the then Attorney-General), Sir R. Rolfe (the Solicitor-General), and Mr. C. Austin,

much learning bearing upon the subject. Serjeant Manning's able and interesting report of this case has very elaborate notes, containing extracts from ancient records more or less relevant.

Since these proceedings took place there have appeared a number of biographical works which have entered on the subject of the old Order of Judges and Serjeants of the Coif.

In Lord Campbell's *Lives of the Chief Justices and Lord Chancellors*, there are a great many references to Judges and Serjeants, with statements occasionally very inaccurate; in Mr. Foss's laborious work, containing an account of all the Judges and Serjeants of the Coif, there is information far more reliable; and in two vols. published by Serjeant Woolrych¹ in 1869, entitled '*Lives of Eminent Serjeants*,' there are special accounts of eminent Serjeants-at-law who were not raised to the Bench, so that Serjeant Woolrych supplies information which Lord Campbell leaves out. The latter objected to include in his account of the English Bench *any below Chief Justices*; and it must be added that, as a rule, where in any of his books Lord Campbell had occasion to refer to the *puisne* Judges and Serjeants he generally took the opportunity of doing something more than speak disrespectfully of them.

It has been long considered an easy and safe task to disparage the Serjeants-at-law. Their number indeed seems to have been always small, and in the conflict at the Bar as to precedence and privileges, the old order has long been obliged to yield to superior numbers. The Serjeants-at-law have been the victims of endless

¹ '*Lives of Eminent Serjeants-at-law*,' by H. W. Woolrych, S.L., 2 vols. 8vo. London, 1869.

devices to their prejudice, and in the scramble for privilege, the Serjeants' place in Westminster Hall was made to give way without any public advantage being gained. The suggestions here made for reviving the ancient order would in days gone by have been welcomed by all Westminster Hall, and would now probably meet with the approbation of no insignificant part of the present Bench and Bar of England, and of all who respect time-honoured institutions. The venerable Order of the Coif came with the Common Law of England, and ought not to be entirely sacrificed without some effort being made to preserve it.

The antiquity of the old order we have sufficiently dealt with. Its actual history may interest many of those who have not given it sufficient consideration. We will only here say that in the ensuing pages the reader will find not merely the history of the old order, but information upon the subject which must be a matter of interest not only to lawyers but to the students of the constitution and history of England. The arrangement of the subject will be seen in the table of contents, and our long list of the Judges and Serjeants of the Coif supplies the reader with the names of over a thousand men who made their mark in the history of the Bench and Bar in England. Without regarding the statements of careless writers who have spoken of the order of Serjeants as if it were now *abolished*, we will here simply refer to what is said in our concluding chapter. It is there suggested that it would not be very difficult to make the Order of the Coif merely a matter of history, but it would be better and wiser to look upon the old institution as still having life in it, and requiring only proper care in order that it may yet live

in the future, as it has done in the past, one of the most sound and honoured institutions belonging to the law of England.

The old Order of the Coif were not only *Servientes ad legem* but assistants to the Legislature. The names of Serjeants-at-law figure in the history of the House of Commons among the most honoured of its members. During the reigns of Edward VI., Elizabeth, and James I., the Speaker was almost always a Serjeant-at-law. Brooke and Dyer, Bell and Popham, Pickering, Yelverton, Croke, Hobart, Richardson, Sir John Glanville, and Sir Heneage Finch, all filled the Speaker's chair, and were all distinguished Serjeants-at-law; and our readers need not be told that Serjeant Maynard and Serjeant Glynn were certainly so. The Woolsack, which up to the time of Elizabeth nearly always fell to the lot of Churchmen, thenceforth was entrusted generally to members of the Coif; and in 1688, the Great Seal having to be put in commission, three Serjeants-at-law were chosen for the purpose—Maynard, Rawlins, and Keck. In more recent times, as observed in the 'Edinburgh Review,' Lord Chancellors have been usually chosen from the Chancery Bar; but Serjeant Copley (Lord Lyndhurst), and Serjeant Wilde (Lord Truro), are certainly above the average of men who have sat on the woolsack.

The Order of the Coif has always afforded a sufficient supply of very distinguished men, erudite lawyers, powerful advocates, great Judges, and masterly writers. If in more recent times the better places at the Bar have fallen to the lot of Queen's Counsel, the good name of the Serjeants-at-law has been well maintained. Whilst the more modern and more numerous body has

supplied as successors to Bacon and North, such men as Scarlett, Pollock, Sugden, Follett, Erle, Cockburn, Roundell Palmer, and Cairns, the older order includes a list of very considerable men, from the days of Plowden and Coke, Hale and Maynard, to those nearer to our own time when in Serjeant Williams, Serjeant Copley, Serjeant Best, Serjeant Wilde, Serjeant Coleridge, Serjeant Talfourd, Serjeant Wrangham, Serjeant Shee, Serjeant Byles, Serjeant Wilkins, and Serjeant Ballantine, we find men who each in his own proper sphere, has been *facile princeps*.

ALEX. PULLING.

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SERJEANTS OF THE COIF, WITH THE DATE OF THEIR CREATION.

Abbott, Charles (Lord Ten-	Aspinal, John	1763
terden)	Atcherley, David F. Jones ...	1827
1816	Athow, Thomas	1614
Abney, Thomas	Atkins, Edward	1640
1740	Atkins, Edward	1679
Adair, James	Atkinson, George	1854
1774	Atkinson, H. Tindal	1864
Adams, John	Atkyns, Robert	1672
1824	Auberville, William de ...	1182
Adams, Richard	Audley, Thomas	1531
1753	Ayloff, William	1577
Agar, Lawrence	Ayloff, William	1627
1700	Ayscoghe, William	1437
Agar, John	Ayshtone, Nicholas de ...	1443
1736		
Aland, John Fortescue (Lord	Babbington, William	1418
Fortescue)	Baber, Edward	1577
1717	Bacon, John	1288
Aldeburg, Richard de ...	Bacon, Thomas	1329
1329	Bacon, Francis	1640
Alderson, Edward Hall ...	Bailey, John	1799
1830	Bain, Edwin S.	1845
Allen, Robert	Baines, John	1724
1845	Baker	1566
Alexander, William	Baldock, Robert	1677
1824	Baldwin, John	1531
Allibone, Richard	Baldwin, Samuel	1669
1687	Ballantine, William	1856
Altham, James	Banister, William	1706
1603	Banks, John	1641
Amherst, Richard	Barham, Nicholas	1567
1623	Barnard, Robert	1648
Amphlett, Richard Paul ...		
1874		
Anderson, Edmund		
1577		
Andrews, Thomas		
1827		
Arabin, William St. John ...		
1824		
Archer, John		
1658		
Archibald, Thomas Dickson		
1872		
Arderne, Peter		
1443		
Arden, Richard Pepper (Lord		
Alvanley)		
1801		
Argentine, Reginald		
1201		
Ashe, Alan de		
1340		
Ashley, Francis		
1617		
Ashurst, William Henry ...		
1770		
Aske, Richard		
1649		
Askham, Walter		
1411		

Barker, Robert ...	1603	Boeff, William ...	1453
Barnardiston, Thomas ...	1736	Bolland, William ...	1829
Barrett, Paul ...	1683	Bolton, James Clayton ...	1799
Barton, John ...	1669	Bompas, Charles C. ...	1827
Barton, John, sen. ...	1415	Bond, George ...	1786
Barton, John, jun. ...	1411	Bond, Nathaniel ...	1689
Basset, Alan ...	1217	Bonithon, Charles ...	1692
Basset, Thomas ...	1262	Boone, Gilbert ...	1636
Basset, William ...	1176	Bootle, Edward ...	1736
Basset, William ...	1337	Boreham ...	1264
Bathonia, Henry de ...	1251	Bosanquet, John Bernard ...	1814
Bathurst, Henry ...	1754	Bosco, John de ...	1203
Battesford ...	1307	Boteler, John ...	1494
Bawtry, Leonard ...	1614	Bourchier or Bousser ...	1327
Bayley, John ...	1799	Bovill, William ...	1866
Baynard, Robert ...	1327	Boyland, Richard ...	1279
Bealknap, Robert ...	1367	Boynton, John ...	1679
Beauchamp ...	1234	Brabazon, Richard de ...	1287
Beaumont, Francis ...	1589	Bracton, Henry de ...	1245
Bedingfield, Henry ...	1663	Bradbury, George ...	1606
Bedingfield, Thomas ...	1648	Bradshaw, John ...	1648
Beere, George ...	1660	Braintwaite, William ...	1715
Bekingham, Elias de ...	1275	Bramston, Francis ...	1678
Bell, Robert ...	1565	Bramston, John ...	1623
Bellasia, Edward ...	1844	Bramwell, George William	
Belwood, Roger ...	1689	Wilshire (Lord) ...	1856
Benfield, John ...	1715	Branthwaite, Richard ...	1593
Benlowes, William ...	1555	Braybrock, Henry de ...	1199
Bennet, John ...	1706	Brenchesley, William ...	1390
Bereford ...	1309	Bretland, Reginald ...	1692
Berewik ...	1292	Brett, William Baliot ...	1868
Berkeley, Maurice de ...	1190	Brian, Thomas ...	1463
Berkeley, Robert de ...	1200	Brerewood, Robert ...	1640
Berkeley, Robert ...	1627	Bridgeman, John ...	1623
Bernard, Robert ...	1648	Bridgeman, Orlando ...	1660
Bertie Vere ...	1675	Brigges, Thomas ...	1478
Best, William Draper (Lord		Brock, Lawrence de ...	1260
Wynford) ...	1800	Broderick, John ...	1706
Bigot ...	1220	Brome, Thomas ...	1660
Billing, Thomas ...	1448	Bromley, Edward ...	1610
Bingham, Richard ...	1443	Bromley, Thomas ...	1540
Birch, John ...	1706	Brompton ...	1284
Birch, Thomas ...	1730	Brook, David ...	1547
Blackburn, Colin (Lord) ...	1859	Brooke, Richard ...	1510
Blackstone, William ...	1770	Brooke, Robert ...	1552
Blencowe, John ...	1689	Brown, John ...	1521
Blosset ...	1816	Browne, Anthony ...	1555
Bocland, Geoffrey de ...	1218	Browne, Humphrey ...	1531

Browne, Samuel	1648	Cheyne, William	1410
Bruce, Robert de	1262	Chibon, John	1614
Brudenell, Robert	1504	Chidley, Robert	1540
Bryan, Thomas	1463	Choke, Richard	1433
Brydges, William	1715	Cholmney, Ranulph	1558
Bucleby, William	1679	Cholmney, Roger	1531
Buller, Francis	1778	Clarke, Charles	1743
Burch, Edward	1683	Clarke, Henry	1636
Burgh, Lncas de	1335	Clay, Edmund de	1383
Burgh, William	1349	Clayton, Ralph	1788
Burke, Peter	1860	Cleasty, Anthony	1869
Burland, John	1762	Clench, John	1580
Burnet, Thomas	1736	Clerke, John	1648
Burrough, James	1816	Clerke, N. R.	1843
Burton	1350	Clerke, Robert	1587
Bury, Thomas	1700	Clive, Edward	1745
Byles, John Barnard	1843	Clopton, Walter de	1377
		Cobbeham, John de	1275
Callice or Carris, Robert	1628	Cockburn, Alex. James	1856
Calowe, William	1475	Cockell, William	1787
Calthorpe le Strange	1675	Cokayne, John	1440
Campbell, John (Lord)	1850	Coke, Edward	1606
Cantebrig, John de	1329	Coke, William	1547
Carter, Lawrence	1724	Cokefield, John de	1253
Carthew, Thomas	1700	Colepeper, John	1402
Carrell, John	1510	Coleridge, John Duke (Lord)	1874
Carrell, John	1540	Coleridge, John Taylor	1832
Carrell, John	1552	Colow, William	1478
Carus, Thomas	1558	Coltman, Thomas	1837
Cassy, John	1463	Comyns, John	1706
Catesby, John	1464	Coningsby, Humphrey	1494
Catlin, Richard	1552	Coningsby, William	1540
Catlin, Robert	1555	Constable, Robert	1494
Caundish, Robert	1424	Cooper, John	1589
Cavendish, John de	1366	Copley, John Singleton (Lord	
Chamberlayne, Thomas	1614	Lyndhurst)	1813
Chambre, Alan	1799	Corbet, John	1659
Channell, William Fry	1840	Corbet, Reginald	1558
Chantrell, William	1424	Corbet, Edward	1727
Chapman, Thomas	1648	Cotesmore, John	1418
Chapple, William	1724	Coventry, Thomas	1603
Charleton, Job	1660	Cowper, Spencer	1727
Chaleton, Robert de	1388	Cox, Edward William	1868
Chauncy, Henry	1688	Crawley, Francis	1623
Chaynell, John	1312	Cresheld, Richard	1636
Cheatham, Henry	1706	Cresswell, Cresswell	1842
Chellerey, Edmund	1363	Cressy, Hugh de	1177
Cheshire, John	1706	Crew, Randalphe	1615

Crewe, Thomas	1623	Draper, Richard	1736
Croke, George	1623	Drew, Edward	1589
Croke, John	1603	Dyer, James	1552
Croke, William	1547		
Crompton, Charles	1852	Edenham, Jeffrey de	1331
Crooke, Richard	1675	Eliot, Richard	1503
Crooke, Norton	1654	Ellarker, John	1424
Cross, John	1819	Ellis, William	1669
Crowder, Richard B.	1834	Eltonhead, John	1648
Cuelworth, William de	1244	Englefield, Thomas	1521
Cumin, John de	1174	Englefield, William de	1240
Cummyns, Ricbard	1724	Erle, Erasmus	1648
Cuthbert, John	1715	Erle, William	1715
Cutler, John	1503	Erle, William	1844
Cutler, William	1502	Ernle, John	1519
		Erskine, Thomas	1839
Dalison, Charles	1660	Ever, Sampson	1640
Dalison, William	1552	Ewens, Matthew	1598
Dallas, Robert	1813	Eyre, Giles	1689
Dampier, Henry	1813	Eyre, Giles	1724
Danby, Robert	1443	Eyre, James	1772
Daniel, William	1594	Eyre, Robert	1710
Danvers, Robert	1443	Eyre, Samuel	1692
Danvers, William	1485	Eyre, William	1745
Dany, John	1623		
Darnall, John	1714	Fairfax, Guy	1463
Davenport, Humphery	1623	Fairfax, Thomas	1521
Davis, John	1606	Fairfax, William	1504
Davy, William	1755	Farrington, Anthony	1683
De Grey, William	1771	Fencotes, John de	1366
Denham, John	1604	Fencotes, Thomas de	1343
Denison, Thomas	1741	Fenner, Edward	1577
Denman, George	1872	Field, William Veneris	1875
Denman, Thomas (Lord)	1832	Finch, Heneage	1653
Denn, Vincent	1688	Finch, Henry	1614
Densill, John	1531	Finch, John (Lord Finch)	1634
Denton, Alexander	1722	Finch, Nathaniel	1636
Denum, John de	1321	Fineux, John	1485
Denum, Robert de	1329	Firth, William	1817
Denum, William de	1332	Fisher, John	1486
Diggs, Richard	1623	Fishide, William de	1357
Dodd, Samuel	1714	Fitz Herbert, Anthony	1510
Doderidge, John	1603	Fitz Hervey, Osbert	1182
Dolben, William	1677	Fitz James, John	1521
Doresme, Aldred	1338	Fitz Peter, Geofrey	1198
Dormer, Robert	1706	Fitz Ralph, William	1174
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Fitz-Stephen, William	...	1174	Godbolt, John	...	1636
Fitz William, Adam	...	1324	Goddard, Gibbon	...	1669
Fleetwood, William	...	1580	Goderede, William	...	1425
Fletcher, Thomas	...	1594	Goodfellow, Christopher	...	1669
Fleming, Thomas	...	1594	Gooding, Thomas	...	1692
Flint, Thomas	...	1669	Goulburn, Edward	...	1829
Fortesoue, John	...	1429	Gould, Henry	...	1692
Fortescue, William	...	1736	Gould, Henry	...	1761
Foster, Michael	...	1736	Graham, Robert	...	1800
Foster, Robert	...	1636	Green, Henry de	...	1346
Foster, Thomas	...	1603	Green, John	...	1640
Foster, James	...	1757	Green, John	...	1700
Fountain, John	...	1658	Gregory, William	...	1677
Fray, John	...	1435	Grenefield, Thomas	...	1463
Frere, William	...	1809	Grevill, William	...	1504
Frisby, William	...	1401	Griffin	...	1504
Frowyk, Thomas	...	1494	Grose, Nash	...	1774
Fuller, Francis	...	1688	Grove, John	...	1706
Fulthorpe, Roger de	...	1371	Grove, William Robert	...	1872
Fulthorpe, Thomas	...	1424	Guldeford, Henry de	...	1305
Fyncheden, William de	...	1363	Gundry, Nathaniel	...	1750
			Gurney, John	...	1832
			Gwyn, Rice	...	1623
Gaerst, Hugh de	...	1179			
Gapper, Abraham	...	1736	Hale, Bernard	...	1725
Gardiner, Robert	...	1587	Hale, Matthew	...	1654
Garrow, William	...	1817	Hales, James	...	1540
Gascoign, William	...	1397	Hall, William	...	1700
Gaselee, Stephen	...	1824	Hall, William	...	1424
Gaselee, Stephen	...	1840	Halls, John	...	1413
Gates, Thomas	...	1648	Halcomb, John	...	1840
Gatesden, John de	...	1250	Halton, Robert	...	1580
Gawdy, Francis	...	1577	Hamond, Thomas	...	1589
Gawdy, Thomas, sen.	...	1552	Hampson, Robert	...	1679
Geers, Thomas	...	1686	Hankford, William	...	1390
Gent, Thomas	...	1584	Hanbury, Thomas	...	1715
Gerard, Gilbert	...	1558	Hannemere, David de	...	1378
Gibbons, Thomas	...	1700	Hannen, James	...	1868
Gibbs, Vicary	...	1814	Hardres, Thomas	...	1669
Gifford, Robert (Lord Gifford)	...	1824	Harpur, Richard	...	1558
Gilbert, Jeffrey	...	1722	Harris, John	...	1540
Girdler, Joseph	...	1724	Harris, Thomas	...	1589
Giselham, William de	...	1281	Harvey, Francis	...	1614
Glanvil, Ranulph de	...	1179	Hatsell, Henry	...	1689
Glanville, John	...	1589	Hatton, Robert	...	1648
Glanville, John	...	1637	Hawkins, Williams	...	1724
Glover, William	...	1840	Hawes or Haugh, John	...	1486
Glynn, John	...	1648	Hayward, William	...	1736
Glynn, John	...	1763			

Hayes, George	1856	Hopton, William de	1335
Headley, Thomas	1623	Hornby, William	1399
Heath, George	1830	Horton, Roger	1415
Heath, John	1775	Hoskins, Edward	1660
Heath, Richard	1683	Hoskins, John	1623
Heath, Robert	1631	Hotham, Beaumont	1775
Heigham, Clement	1555	Houghton, Robert	1603
Hele, John	1594	Howard, William	1287
Helméswell, William de	1297	Howel, John	1669
Helynn, Walter de	1304	Huddersfield, John	1485
Henden, Edward	1616	Huddleston, John Walter	1875
Hengham, Ralph de	1272	Hullock, John	1816
Herbert, Edward	1685	Hulls or Holls	1389
Heriet, Richard de	1195	Huscarl, Roger	1210
Herle, William de	1316	Husee, William	1478
Heron, Edward	1594	Hussey, Thomas	1736
Hertelpole, Geoffrey de	1320	Hutchings, George	1686
Hertford, Robert de	1290	Hutton, Richard	1603
Hewitt, James (Lord Lifford)	1755	Hyde, Frederick	1660
Heydon, Thomas de	1218	Hyde, Nicholas	1627
Heym, Stephen	1270	Hyde, Robert	1640
Heywood, Samuel	1794	Hynde, John	1531
Hicham, Robert	1614	Hyndstone, William	1453
Higham, Richard	1472		
Higham, Richard	1494	Illingworth, Richard	1462
Hill, Hugh	1858	Inge, John	1331
Hill or Hull, John	1382	Inge, William	1292
Hill or Hull, Robert	1395	Ingleby, Charles	1688
Hill, George	1772	Ingleby, Thomas de	1347
Hill, Hugh	1858	Insula, John de	1307
Hill, Roger	1655	Insula, Simon de	1217
Hillary, Roger	1337	Insula, William de	1235
Hobart, Henry	1601	Ivyn, John	1416
Hodges, Hugh	1686		
Hody, John	1436	Jay, Richard	1485
Hody, William	1485	Jefferson, John	1683
Holloway, Charles	1660	Jeffrey, John	1567
Holloway, Richard	1675	Jeffries, George (Lord)	1679
Holroyd, George Sowley	1816	Jekyll, Joseph	1700
Holt, John	1378	Jenner, Thomas	1683
Holt, John	1686	Jenny, Christopher	1531
Holt, Thomas	1677	Jenny, William	1463
Honyman, George	1873	Jephson, William	1765
Hoo, Johu	1706	Jermyn, Philip	1636
Hook, John	1700	Jervis, John	1850
Hooper, Richard	1700	Johnson, George	1677
Hopkins, Richard	1669	Jones, Atcherley	1827
Hopton, Walter de	1274	Jones, Chadwick	1844

DATE OF THEIR CREATION.

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Jones, Herbert George	...	1842	Lewkenor, Richard	...	1593
Jones, William	...	1617	Lexinton, John de	...	1248
Jones, Thomas	...	1669	Ley, James (Earl of Marl-	...	...
Jwyn or Ivyn, John	...	1403	borough)	...	1606
Keating, Henry Singer	...	1860	Lindley, Nathaniel	...	1875
Keck, Anthony	...	1759	Littlebere, Martin de	...	1261
Keeble, Thomas	...	1494	Littledale, Joseph	...	1824
Keeble, Richard	...	1648	Littleton, William	...	1640
Keeble, Walter	...	1481	Lloyd, Henry	...	1706
Keen, John	...	1700	Lloyd, Richard	...	1759
Keilweg, Robert	...	1552	Lodington, William	...	1410
Kelleshull, Richard de	...	1344	Lokton, John de	...	1385
Kelly, Fitzroy	...	1866	Lopham, Thomas	...	1415
Kelyng, John	...	1680	Louthor, Thomas de	...	1330
Kempe, William	...	1772	Lovelace, William	...	1567
Kenyon, Lloyd (Lord)	...	1788	Lovell, Salathiel	...	1688
Kettleby, R. Johnson	...	1736	Lovetot, John de	...	1275
King, Peter (Lord)	...	1714	Ludlow	...	1838
Kinglake, John Alexander	...	1844	Luke, Walter	...	1531
Kingsmill, George	...	1534	Lush, Robert	...	1865
Kingsmill, George	...	1593	Lutwiche, Edward	...	1680
Kingsmill, John	...	1494	Lyster, Richard	...	1529
Kirby, Cranly Thomas	...	1781	Lyttelton, Edward (Lord)	...	1640
Kirketon, Roger de	...	1366	Lyttleton, Thomas	...	1453
Knyvet, John	...	1357	Lyttleton, Timothy	...	1670
Kyme, Simon de	...	1191	Macdonald, Archibald	...	1792
Laken, William	...	1453	Malet, Thomas	...	1635
Lane, Richard	...	1643	Mallore, Peter	...	1292
Law, Edward (Lord Ellen-	...	...	Manley, Francis	...	1679
borough)	...	1802	Manley, William	...	1808
Lawes, Edward	...	1827	Manning, James	...	1840
Lawes, Vitruvius	...	1819	Mansfield, James	...	1804
Lawrence, Soulden	...	1791	Manwood, Roger	...	1567
Le Blanc, Simon	...	1787	Mareschall or Marshall,	...	...
Lechmere, Nicholas	...	1689	Thomas le	...	1297
Lee, William	...	1730	Markham, John	...	1391
Leeds, Edward	...	1742	Markham, John	...	1444
Leeke, William	...	1679	Marrow, Thomas	...	1503
Legge, Heneage	...	1747	Martin, Lomax	...	1755
Le Hunt, William	...	1688	Martin, Samuel	...	1850
Leigh, Richard	...	1765	Martyn, John	...	1415
Lens, John	...	1799	Marshall, S.	...	1787
Lester, Roger de	...	1293	Matthews, Robert	...	1852
Leuknore, Geoffrey de	...	1545	Maule, William Henry	...	1839
Leving, Timothy	...	1636	Maynard, John	...	1654
Levinz, Creswell	...	1681	Mead, Nathaniel	...	1715
			Meade, Thomas	...	1567

Mellor, John	...	...	1861	Neve, Philip	...	...	1700
Meres or Kirketon, Roger de	...	...	1366	Nevil, Edward	...	...	1684
Merewether, Henry Alworth	...	...	1827	Newbald, Geoffrey de	...	...	1276
Merrifield, John	...	...	1660	Newdigate, John	...	...	1510
Mervin, Edmund	...	...	1531	Newdigate, Richard	...	...	1654
Methwould, William	...	...	1611	Newport, John	...	...	1510
Metingham, John de	...	...	1275	Newton, Richard	...	...	1424
Meynell, Robert	...	...	1547	Nicholas, Robert	...	...	1648
Middleton, Adam de	...	...	1313	Nichols, Augustine	...	...	1603
Middleton, John de	...	...	1378	Noel, William	...	...	1757
Millar, Edward	...	...	1715	North, Edward (Lord)	...	...	1542
Miller, Robert	...	...	1850	North, Francis (Lord Guil-	...	...	1674
Millington, John	...	...	1683	ford)	...	...	1674
Milton, Christopher	...	...	1686	Norton, Richard	...	...	1406
Milward, Thomas	...	...	1636	Norwich, Robert	...	...	1521
Missenden, James	...	...	1540	Nott, Fettiplace	...	...	1724
Molineux, Edmund	...	...	1542	Nottingham, William	...	...	1479
Monson, Robert	...	...	1572	Notton, William de	...	...	1346
Montague, Edward	...	...	1531	O'Brien, Michael	...	...	1862
Montague, Henry	...	...	1611	Onslow, Arthur	...	...	1800
Montague, William	...	...	1676	Ormesby, William de	...	...	1296
Montague, James	...	...	1714	Owen, Thomas	...	...	1589
Montingham, John de	...	...	1276	Oxonbridge, Thomas	...	...	1494
Moore, Francis	...	...	1614	Page, Francis	...	...	1715
Moore, John	...	...	1614	Pakington, John	...	...	1531
Mordaunt, John	...	...	1494	Palmer, Arthur	...	...	1796
More, John	...	...	1503	Palmer, Guy	...	...	1505
More, Roger	...	...	1692	Palms, Brian	...	...	1510
Morgan, Francis	...	...	1555	Park, James Alan	...	...	1816
Morgan, Richard	...	...	1546	Parke, James (Lord Wensley-	...	...	1828
Moris	...	...	1366	dale)	...	...	1828
Morley, Thomas	...	...	1724	Parker, John	...	...	1648
Morton, William	...	...	1660	Parker, Thomas (Lord Mac-	...	...	1705
Moses, William	...	...	1688	clesfield)	...	...	1736
Motelow, Henry de	...	...	1355	Parking, Robert	...	...	1335
Mowbray, John de	...	...	1354	Parry, John Humffreys	...	...	1856
Moyle, Walter	...	...	1443	Passelegh, Edmundus	...	...	1310
Muleton, Thomas de	...	...	1224	Paston, William	...	...	1421
Munday, James	...	...	1700	Patishull, Martin de	...	...	1217
Murdac, Hugh	...	...	1179	Patteson, John	...	...	1830
Murphy, Francis Stack	...	...	1842	Paulet, William	...	...	1689
Murray, William (Lord Mans-	...	...	1756	Payne, William	...	...	1858
field)	...	...	1756	Peake, Thomas	...	...	1820
Mutford, John de	...	...	1316	Peck, Edward	...	...	1673
Nares, George	...	...	1759	Peckham, Henry	...	...	1669
Needham, John	...	...	1453				
Neele, Richard	...	...	1463				

Peckwell, Robert Henry ...	1809	Price, Robert ...	1702
Pell, Albert ...	1808	Pricket, George ...	1692
Pemberton, Francis ...	1675	Prideaux, John ...	1535
Pengelley, Thomas ...	1710	Prime, Samuel ...	1736
Penley, Nicholas ...	1675	Prisot, John ...	1443
Pepys, Richard ...	1654	Probyn, Edmund ...	1724
Percehay, Henry de ...	1370	Puckering, John ...	1580
Percy, Peter de ...	1257	Pudsey, George ...	1683
Perrot, George ...	1763	Puleston, John ...	1648
Perryam, William ...	1579	Pulling, Alexander ...	1864
Perryn, Richard ...	1776	Purly, Francis ...	1692
Persey, Walter ...	1375		
Petersdorff, Charles ...	1858	Raby, John ...	1724
Phelipps, Edward ...	1597	Rainsford, Richard ...	1660
Phesant, Peter ...	1640	Rastall, William ...	1555
Phillips, Ambrose ...	1686	Rawlings, Thomas ...	1677
Pigot, Thomas ...	1503	Rawlinson, William ...	1686
Pigot, Richard ...	1463	Raymond, Thomas ...	1677
Pigott, Gillery ...	1856	Raymond, Robert (Lord) ...	1724
Platt, Thomas James ...	1845	Read, John ...	1401
Plesyngton, Robert de ...	1380	Read, Robert ...	1480
Plowden, Edmund ...	1558	Réeve, Edmund ...	1636
Pole, Ralph ...	1443	Reeve, Thomas ...	1733
Pole, William ...	1418	Reynolds, James ...	1715
Pollard, Lewis ...	1503	Reynolds, James ...	1740
Pollard, John ...	1547	Reynolds, James ...	1727
Pollexfen, Henry ...	1689	Richard, Richards ...	1814
Pollock, Charles Edward ...	1873	Richardson, John ...	1818
Pollock, Frederick ...	1844	Richardson, Richard ...	1706
Poole, David ...	1747	Richardson, Thomas ...	1626
Popham, John ...	1578	Richardson, William ...	1384
Port, John ...	1521	Ridel, Geoffrey ...	1117
Portington, John ...	1440	Rigby, Alexander ...	1649
Portman, William ...	1540	Rigby, Robert ...	1675
Poterna, James de ...	1197	Robinson, Benjamin Coulson	1865
Poulet, William ...	1415	Rodes, Francis ...	1578
Powell, John ...	1687	Roe, John ...	1510
Powell, Thomas ...	1683	Rogers, Thomas ...	1479
Powell, William ...	1648	Rolfe, Thomas ...	1418
Powtrell, Nicholas ...	1558	Rolfe, Robert Monson (Lord	
Powys, Littleton ...	1692	Cranworth) ...	1839
Powys, Thomas ...	1669	Rokeby, Radulphus ...	1552
Powys, Thomas ...	1702	Rokeby, Thomas ...	1689
Praed, William Mackworth	1801	Rokele, Robert de ...	1234
Pratt, Charles (Lord Camden)	1761	Rooke, Giles ...	1781
Preston, Gilbert de ...	1242	Rolle, Henry ...	1640
Preston, John de ...	1416	Ronbury, Gilbert de ...	1295
Preston, Robert de ...	1357	Rose, John William ...	1789

Rough	1808	Skipwith, Thomas	1675
Runnington, Charles	1787	Skipwith, William de	1335
Rushedon, Thomas	1540	Skrene, William	1408
Russell, William Oldnall	1827	Skynner, John	1777
Ryder, Dudley	1754	Sleigh, W. Campbell	1868
St. John, Oliver	1648	Smith, John	1700
Salkeld, William	1715	Smith, Montague Edward	1865
Sargood, Augustine	1868	Smythe, Sydney Stafford	1750
Saunders, Edward	1540	Snagg, Thomas	1580
Saunders, Edmund	1682	Snigge, George	1604
Savile, John	1592	Southcote, John	1554
Sayer, Joseph	1761	Spankie, Robert	1824
Scarlett, James (Lord Abinger)	1834	Spelman, John	1521
Scotrc, Roger de	1310	Spigurnel, Henry	1338
Scott, John (Lord Eldon)	1799	Spinks, Frederick Lowton	1862
Scott, William	1335	Spurling, John	1593
Scriven, John	1827	Stanyforth, Thomas	1757
Serogga, William	1669	Stapleton, Nicholas de	1304
Scrope, Galfride le	1316	Starkey, Humphrey	1478
Scrope, Henry de	1307	Staunford, William	1553
Segrave, Gilbert de	1251	Staunton, Hervey	1306
Segrave, Stephen de	1218	Steele, William	1654
Selby, Henry	1683	Stephen, Henry John	1827
Selby, James	1700	Stevens, Henry	1715
Selby, Ralph de	1393	Stevens, Robert	1675
Sellon, John	1798	Steyngrave, Adam de	1341
Setone, Thomas de	1346	Stode, George	1675
Seya, Evan	1649	Stone, John	1640
Shaftoe, Robert	1675	Stonore, John de	1316
Shardelowe, Robert de	1228	Storka, Henry	1827
Shardelowe, John de	1332	Stote, Richard	1675
Sharesnull, William de	1332	Stouvord, John de	1341
Shaw, John	1677	Strangeways, James	1411
Shee, William	1810	Street, Thomas	1677
Shelley, William	1521	Stringer, Thomas	1677
Shephard, William	1656	Strode, Thomas	1677
Shephard, James	1724	Sulyard, John	1477
Shepherd, Samuel	1796	Sutton, Elias de	1285
Shirley, John	1603	Sutton, Thomas Manners	
Shirley, John	1620	(Lord Manners)	1805
Shottindon, Rodert de	1254	Sydenham, Richard	1388
Shute, Robert	1577	Taddy, William	1818
Shuttleworth, Richard	1584	Talford, Thomas Noon	1833
Simmons, William	1558	Tanfield, Lawrence	1603
Simon, John	1864	Tate, John	1668
Skinner, Matthew	1725	Taunton, William Elias	1830
		Taylor, Richard	1640

Thirning, William ...	1388	Urswyke, Thomas ...	1479
Thomas, Ralph ...	1852		
Thompson, William ...	1688	Vaughan, Harley ...	1772
Thomson, Alexander ...	1787	Vaughan, John ...	1667
Thomson, S. V. ...	1841	Vaughan, John ...	1799
Thomson, William ...	1729	Vaughan, John ...	1816
Thorpe, Francis ...	1648	Vavasour, John ...	1478
Thorpe, Robert de ...	1346	Ventris, Peyton ...	1689
Thorpe, William de ...	1342	Vernon, George ...	1627
Thurbane, John ...	1689		
Thurkelby, Roger de ...	1241	Wadham, John ...	1388
Thyne, Egremont ...	1623	Wakbruge ...	1371
Tildeslegh, Thomas ...	1402	Walcot, Thomas ...	1679
Tindal, Nicholas Conyngham	1829	Walerand, Robert ...	1251
Tirwhit, Robert ...	1399	Walker, Thomas ...	1772
Toiler, John ...	1736	Walkingham, Alan de ...	1280
Toutheby, Gilbert de ...	1316	Wall, George ...	1558
Townsend, Robert ...	1540	Waller, Thomas ...	1659
Townsend, Roger ...	1477	Wallinger, A. ...	1848
Towse, William ...	1614	Walmsley, Thomas ...	1580
Tozer, John ...	1858	Walpole, John ...	1555
Tracy, Robert ...	1700	Walsh, John ...	1559
Travers, John ...	1320	Walter, John ...	1625
Tremayle, Thomas ...	1478	Wangford, William ...	1453
Tremayne, John ...	1689	Warburton, Peter ...	1593
Trenchard, John ...	1689	Warburton, Peter ...	1649
Tresnlyan, Robert de ...	1378	Ward, Edward ...	1695
Trevaignon, John de ...	1335	Ward, Rowley ...	1672
Trevor, Thomas ...	1625	Warrenne, Reginald de ...	1168
Trevor, Thomas (Lord) ...	1701	Warrenne, William de ...	1195
Trewythosa, Simon de ...	1335	Warwick, Nicholas de ...	1293
Trekingham, Lambert de ...	1299	Watson, William Henry ...	1856
Trinder, Henry ...	1688	Webb, Thomas ...	1706
Trop, Simon de ...	1252	Wedderburn, Alexander (Lord	
Trussel, William ...	1252	Loughborough) ...	1780
Turner, Arthur ...	1636	Weld, Joseph ...	1706
Turner, Edward ...	1671	Wells, Mordaunt L. ...	1856
Turner, Henry ...	1700	West, Edmund ...	1679
Turner, John ...	1669	Westbury, William ...	1418
Turner, Timothy ...	1669	Weston, James ...	1631
Turnor, Christopher ...	1660	Weston, John ...	1424
Turri, Jordan de ...	1202	Weston, Richard ...	1559
Turri, Nicholas de ...	1263	Weston, Richard ...	1633
Turton, John ...	1689	Weston, Richard ...	1677
Twisden, Thomas ...	1654	Weston, William ...	1418
Tyrrell, Thomas ...	1659	Weyland, Thomas de ...	1275
		Weyland, William de ...	1272
Ufflete, Gillardus de ...	1366	Wheeler, Thomas ...	1863

Whiddon, John	1547	Wodestoke, James de ...	1340
Whitaker, Charles	1700	Wogan, William	1689
Whitaker, Edward	1715	Wood, George	1807
Whitaker, William	1759	Wood, Thomas	1485
Whitlock, Bulstrode	1648	Woolrych, Humphry William	1855
Whitlock, James	1620	Wrangham, D. C.	1840
Whitfield, Ralph	1634	Wray, Christopher	1567
Wichingham, William de ...	1361	Wright, Martin	1733
Widdrington, Thomas	1648	Wright, Nathan	1692
Wightman, William	1841	Wright, Robert	1679
Wilde, George	1614	Wyatt, Edwin	1683
Wilde, James Plaisted (Lord Penzance)	1860	Wythingham, William de ...	1363
Wilde, John	1636	Wyne, Owen	1683
Wilde, Thomas (Lord Truro)	1824	Wymburn, William de ...	1276
Wilde, William	1660	Wyndham, Francis	1579
Wilkins, Charles	1845	Wyndham, Hugh	1654
Wille	1318	Wyndham, John	1683
Willes, Edward	1768	Wyndham, Wadham	1660
Willes, James Shaw	1855	Wynne, Richard	1706
Willes, John	1737	Wynne, William	1736
Williams, David	1594	Wynyard, William	1410
Williams, E. Vaughan	1846	Wythens, Francis	1683
Williams, John	1834	Wyville, John de	1256
Williams, John	1794		
Willmot, Nicholas	1669	Yates, Joseph	1764
Willoughby, Thomas	1521	Yaxley, John	1494
Wilmot, John Eardley	1755	Yelverton, Christopher ...	1586
Wilson, George	1753	Yelverton, Henry	1625
Wilson, John	1786	Yelverton, William	1440
Wilton, William de	1249	Yorke, Philip (Lord Hard- wicke)	1733
Wilughby, Richard de	1328	York, Roger	1531
Winch, Humfrey	1606	Younge, Thomas	1463
Wingfield, Francis	1677		

THE ORDER OF THE COIF.

INTRODUCTORY CHAPTER.

THE title of this work, 'The Order of the Coif,' has been deliberately chosen.

Explanation of the title of this work.

Using the word "order" in its more legitimate and comprehensive sense, and not merely as denoting a privileged body, indebted for its existence to some solemn act of Papal concession or Royal favour, the title is quite orthodox. There is hardly any more ancient order to be found,¹ [except, perhaps, some of those of a monastic character;] certainly there is none with a more authentic history—more memorable or interesting associations.

The annals of the Coif form an important part of the history of the law of England. They run very far back. The institution had lived at least five hundred years

Antiquity of the order of the Coif.

¹ The Order of the Garter was instituted 1330, of the Bath 1399, of the Thistle 1540, of St. Patrick 1783. The date of the oldest title in the English peerage 1181, of the creation of the first Duke 1338, the first Marquis 1385, the first Viscount 1440.

The degree of Doctor was unknown in England till the beginning of the thirteenth century, the reign of John or of Henry III. The offices of Attorney-General and Solicitor-General date from 1462, though the appointment of King's Attorney is mentioned in 1279. The first appointments of King's Counsel other than the King's Serjeants and the Attorney- and Solicitor-General were by letters patent from James I. and, sixty years after, from Charles II.

when the system of appointing *King's Counsel Extraordinary* was originally introduced. It existed long before Westminster Hall was first built. It was indeed already old before there were either barristers or solicitors. It is very much more ancient than the oldest of our tribunals, for it was called into existence before any large portion of our law was formed.

Various
designations of the
order.

The order of men we are speaking of seems to have been a power in the State as far back as the records of our law extend. From time to time the Brothers of the Coif acquired various designations, all referring to their legal position; but whether included under the general term *witen, sagés gents, lagemannni, men of law, or loiers*, or specially classed as *counteors, serjeant counters, banci narratores, serjeants of the coif, servientes ad legem*, or *Serjeants-at-law*, they have always had, in the words of the writ by which they are called, a fully recognised *statum et gradum*, constituting a brotherhood or order, with settled rules and usages and a distinguishing badge,¹ like the orders, *frateriæ*, fellowships,² guilds, and other foundations originating in the religion, the chivalry, or the industrial combinations of the Middle Ages.

Old rendez-
vous, the
Parvis of
St. Paul's.

The Brothers of the Coif, devoted to the profession of the law, bound by a solemn oath to give counsel and legal aid to the King's people, were for ages to be found

¹ It must be remembered that the names of most of the monastic orders are derived from their distinguishing habit or badge, e.g. the Black Friars, and White Friars, the Grey Friars, the Capuchins, the Crutched Friars, etc., and that there is the same identity between name and badge in the case of our highest order of knighthood, "the Garter."

² *Frateria* was a name in use as well in reference to religious bodies, as to trade and other societies. *Frateriæ beneficiorum Ecclesiæ S. Pauli* is the subject of a whole division in the Statutes of St. Paul's Cathedral.

at their ancient rendezvous in St. Paul's Cathedral, the *Parvis*,¹ or their allotted pillars there, wearing their distinctive costume, the robe and the coif, ever ready to receive those who sought their assistance, to give counsel *pur son donant* to the rich, and gratis to the poor suitor, and to aid when called on in the judicial business of the King's Courts.

Chaucer so refers to them in the 'Canterbury Tales':²

"A serjeant of the law, ware and wise,
That often hadde ben at the parvis,
Ther was also, full rich of excellence.
Discreet he was and of great reverence,
He seemed swiche; his wordes were so wise,
Justice he was ful often in assise,
By patent, and by pleine commissiun;
For his science, and for his high renoun,
Of fees and robes had he many on."

What the Forum was to the Bar of ancient Rome, old St. Paul's Cathedral was for many ages to the Serjeants-at-law. As the Roman advocates paced up and down the *Forum Romanum*, waiting for clients, or to respond to the demand "*licet consulere*,"³ so the old Serjeant Counters were to be found at the Parvis of St. Paul's with the same object, or engaged at their allotted pillars in consultation after the rising of the Courts.

Serjeant
counters
formed the
Bar.

¹ "Paradisus atrium porticibus circumlatum, ante ædes sacras: vulgo Parvis."—Du Cange, Gloss. voce *Parvis*.

² Prologue 9, Tyrwhitt's ed. 1822. The two first lines the reader will recognise as very often quoted. They are to be found in Cowel's 'Interpreter,' and other Law Dictionaries; and they were quoted by Lord Campbell in giving judgment in *Doe d. Bennet v. Hale*, 15 Queen's Bench Reports, 171, that by the law of England a barrister is not altogether precluded from acting as counsel or advocate without being instructed by an attorney or solicitor—an inevitable decision, and one on which Lord Campbell appears to have much prided himself. See vol. ii. of his Life, p. 277.

³ Cic. pro Licin. Murenâ, 13.

Judges
always
taken
from the
order.

When Chaucer wrote, the Order of the Coif was already a very ancient institution, with usages dating back from a remote period. The brothers of the order affording to all who in the orthodox mode sought their aid, counsel, and forensic help; and being, like the Roman advocate,¹ liable at any time to be called in to assist the King's Court by their counsel,² indisputably formed the body from which were exclusively chosen the real Judges of the land, not only the Judges permanently attached to the King's Courts, but those who were assigned by the various circuit commissions to hold the assizes,³ a state of things of which we are reminded by Chaucer's words—

“Justice he was ful often in assise,
By patent, and by pleine commissiun.”

The Order of the Coif grew up with our laws and constitution. It formed, as it were, part of the old common law of England, which might otherwise long since have been swept away, overwhelmed by a thousand mishaps, the victim of endless sinister devices, expedients, innovations, contrivances and conceits.

History of
the order
remark-
able.

The Serjeants-at-law have indeed a grand history. The nucleus of the English Bar, the order embraced for many ages the entire profession: and continued long after all mere *privilege* had ceased, to count among its members some of the best men in Westminster Hall, and at St. Stephen's too—many at least of the most honoured names in English history, not only judges, jurists, learned writers, great advocates, but men who rose to the highest

Number of
disting-
uished
members.

¹ Cic. Quinct. 2.

² See *post*, ch. iv.

³ Assizes may be taken before any justices of the one Bench or the other, *ou Serjant le Roi juré*, i.e. every Serjeant-at-law. 4 Edw. III. c. 16.

positions in the State—members of the Legislature, Cabinet Ministers, occupants of the woolsack and the Speaker's chair; the men from whom have sprung so many of the noble and honoured in the land.¹

On the antiquity of the Order of the Coif it is needless to dwell; and it hardly tends to any useful purpose to follow up the various speculations respecting its origin, or to treat seriously the jejune conjectures and conceits stated to have been entertained on the subject. Let us be content here to regard the origin of the Serjeants-at-law from a clearer and less hazy point of view, and to assume that necessity, the mother of invention, produced the institution here in the same way as law and lawyers have everywhere else been called into existence.

Idle conjectures as to origin of the order.

In the constitution of nearly every state, ancient or modern, we find *men of law* forming an important feature: and they certainly occupied a prominent place in the institutions of the Middle Ages. In France and Lombardy especially, and among most of the northern tribes, not only the judicial body, but the pleaders had duties, privileges, and immunities, apparently derived from a period even still more remote, when justice depended not only on laws, but lawyers coming from Imperial Rome.

Common origin of forensic institutions.

The old name *advocatus* continued as the proper designation of the professional pleader, who was only admitted to act when duly called² to that position by the Court, after a solemn exhortation "*to avoid artifice*"

Ancient rules of the Bar.

¹ See on this, *post*, ch. viii.

² When the primitive relation of patron and client yet existed in Rome, *advocatus* designated the professional lawyer called on by the Prætor to aid the client in litigation. See Liv. Hist. 2, 55.

and circumlocution."¹ Here, as in Rome, the idea of the advocate's services being merely honorary or gratuitous, soon became a legal fiction, the only ground for inquiry in every case of paid advocacy being, whether there had been practised extortion, champerty, illegal maintenance of suits, or fraud or deceit of any kind.²

L'ordre des
avocats in
France.

The famous *ordre des avocats* in France, which was destroyed during the commotion of the Revolution of 1793, traced back its records to the time of Charlemagne, the *Parlement*³ having attached to it regular advocates bound to be in attendance whenever the Chambers were sitting.

The
Norman
conteurs.

In Normandy, as far back as its records extend (and we have in the *Grand Coutumier* and the *Coutumier de*

¹ "Aderant in iudicio advocati, qui causas litigantium nudo simplicique oratione, sine ullo verborum circuitu, tractare jubebantur." See Note xxxvi. to Serjeant Stephen's treatise on Pleading and the authorities there cited.

² Tacitus describes (Annals, xi. ss. 5, 6, 7) the gradual changes in the Roman law, by which the old illusion as to gratuitous advocacy was dispelled, how the Roman advocates, having been in the early days of the Republic positively prohibited from taking any fee or gratuity for their services, were at last legally empowered to receive payment, the maximum fee being ten thousand sesterces, or £120, about the minimum fee now required by the etiquette of the English Bar for a special retainer. The *articuli super chartas* 11. provides *n'est a entendre que home poet aver consaile des contours et des sages gents pur son donant*. See Coke's 2nd Institute, 186, 255.

³ The French *Parlement* seems, under *Pepin le bref*, to have been constituted a regular tribunal for the administration of justice in 792, and from the earliest times there were regular advocates practising at the *Châtelet* in Paris. The capitulaires de Charlemagne—the body of laws made in 802—contain minute regulations as to the duties and rights of the advocates, who were classified as "Counsellors" or Consulting Advocates, Pleaders and Listeners: and none allowed to take their seats in Court unless in becoming costume—large robes and round cap—their robes being made matter of express regulation, the Counsellors being required to wear a long robe of black, covered with a scarlet mantle lined with ermine, and fastened on the chest by a rich clasp. The Pleaders wore a violet cloak, and the Listeners a white one. See on this subject 'History of the French Bar,' by Mr. Robert Jones, p. 116. London, 1855.

*Normandie*¹ very ancient records of the law and usage there), the higher class of *avocats* seem to have had the designation of *Conteurs*, from the *Conte*, *narratio*, or statement with which they opened the cause,² and in the Norman *Conteurs* we find the prototype of the old order of the Bar in this country—the *Serjeant Counters*, *Narratores Banci*, or *Brothers of the Coif*.

Here, as elsewhere, there were probably at all times dilettante, or amateur lawyers, acting as irregular practitioners, but it would seem that the objection *non est advocatus*, from a very early period sufficed to preclude any one not duly qualified or 'duly called', from professionally pleading or acting for another in a lawsuit,³ and, as already observed, there is no question as to the fact that the only legally recognised advocates or pleaders here for a long period after the Conquest were the Serjeant Counters.

Old qualifications.

¹ The *Grand Coutumier* of France was a collection of the customs, usages, and legal forms in use from time immemorial. It was first projected in 1453 by Charles VII., not being completed till a century and a half after. It consisted of the *Coutumier*, or collections of the customs of the different provinces of France, as the *Coutumier de Paris*, the *Coutumier de Normandie*, etc. The version of the *Coutumier de Normandie* adopted in the *Grand Coutumier* had been compiled by the directions of our Henry II., who had been Duke of Normandy and Grand Justiciar here in 1153. This work contains the old customs of Normandy, considerably modified by the laws and customs then in use in England, and imported since the Conquest into the law of Normandy, which in turn entered so largely into the text of much of the law of this country. See on this Sir Matthew Hale's '*History of the Common Law*,' c. 6.

² *Il est appel le Conteur que aucun établit a parler et counter pour Soi en Court.* '*Grand Coutumier de Normandie*,' c. 64. This special chapter de *Conteurs* contains minute regulations as to the duties of the *Conteurs* corresponding with c. 20 of the '*Mirror of Justices*,' referred to *infra*, note (3).

³ See on this subject, Reeves' '*History of the English Law*,' vol. ii. p. 228. Serjeant Stephen, in a note to his excellent work on Pleading, sets out from the *Placitorum Abbreviatio*, fol. 137, the record of a case of this kind in the time of Henry III.

The duties, rights, and obligations of the Serjeant Counters are treated of in the oldest English law book, the 'Mirror of Justices,'¹ which contains minute regulations on the subject, agreeing for the most part with what is laid down in reference to the *Conteurs* in the old compilation already referred to—the *Coutumier de Normandie*. Five hundred years ago, Matthew Paris speaks of the Serjeants-at-law as an institution of great antiquity; and certainly the old Brothers of the Coif, the *Banci narratores* referred to by the chronicler, had long previously occupied a sufficiently prominent position.

'Mirror of
Justices.'

*Coutumier
de Normandie.*

The
Apprenticii
ad legem.

We may assume that the old Order of the Coif was kept up, like other fraternities of skilled or learned men, by a system of apprenticeship. We hear of the *apprenticii*

¹ The antiquity and even the authenticity of the 'Mirror of Justices' have been the subject of controversy. The book first appeared in a printed form in 1642; but there are numerous very old MS. copies, one among the Harl. MSS. in the British Museum, No. 4563, another among Sir Matthew Hale's MSS. in Lincoln's Inn library, 127. In the English printed edition, 1768, by William Hughes of Gray's Inn, the 'Mirror of Justices' is boldly stated to have been written in the old French long *before the Conquest*, and many things added by *Andrew Horne*. This Horne or Horn was Chamberlain and Town Clerk of the City of London in the time of Edward III., and compiler of the book in the Town Clerk's office called *Liber Horne*, the 'Mirror of Justices' being at one time known as 'Horne's Mirror.' Sir William Dugdale says that Horne merely copied the 'Mirror of Justices' from an old law tract called *Speculum Justiciorum*; and in the preface to one of the oldest law dictionaries—*Hickes' Thesaurus*—the 'Mirror of Justices' is treated as the work of an impostor. Lord Coke, however, distinctly speaks of the 'Mirror of Justices' as treating of the laws of the realm before the Conquest—see preface to tenth Report confirming what he had before said in the preface to the ninth Report—when, in reference to a passage quoted from the 'Mirror' in Plowden's 'Commentaries,' Coke says, "not that the book was made before the Conquest, but that the text of law that he cited out of that book was before the Conquest." The question of the antiquity and authenticity of the 'Mirror' is well dealt with in Reeves' 'History of the English Law,' vol. ii. p. 358.

ad legem long before we have any record of the Inns of Court, Barristers, or Solicitors; and it is reasonable to assume that the legal apprenticeship was served under Serjeants of the Coif, of learning and experience, and competent to give instruction. We have ample proof of a very old form of probation¹ of the candidate for admission to the order, in the ancient ceremony of *counting* or going through the form of pleading in a real action, in old Norman French, by way of shewing his technical knowledge and aptitude for the Bench or the Bar.

Probation
by the old
ceremony
of count-
ing.

It has been the received opinion that the supply of men in early times for the legal profession came very generally from the Church, and the name of *clerk* being in old times attached to almost every legal office below the grade of Serjeant or Judge, seems to confirm this idea. Before the thirteenth century the stock of learning of any kind which could be found outside the walls of the monasteries was but small, and the monk and the priest were generally ready to give advice and assistance in mundane as well as spiritual matters to all who sought their aid in *the orthodox form*; law and physic as well as divinity seem to have formed a staple part of the studies of the cloister, and the lucrative profession of the law could hardly fail to attract qualified candidates for practice. We find, in the eleventh century, mention made of certain of the priesthood here who acquired great fame as Jurisconsults, and the monks of

Clergymen
acting as
men of law.

Ignorance
prevailing
before the
thirteenth
century.

Legal
studies in
the monas-
teries.

¹ See on this, *post*, p. 36. In Scotland the course of probation for a seat in the Judicial Court is doubtless borrowed from the old practice in England. The rules of the French Bar as to admission to probation will be found in Mr. Jones's 'History of the French Bar,' p. 180, and it seems once to have been the practice in our Inns of Court to make the gentlemen about to be called to the Bar to read out some formal pleading.

Legal
learning
of the
monks of
Abingdon.
Opinion of
Dugdale.

Abingdon are especially mentioned among the most eminent of these.¹ Sir W. Dugdale says that up to the time of the Conquest there were few lawyers here who were not clerks in orders, and the clerical worship of Mammon appears to have so far spread that we are told by William of Malmesbury it had become difficult to find a rich man who was not a usurer, a clergyman who did not intermeddle in lawsuits.²

Misquoted
passage of
William of
Malmes-
bury.
How
various
mistakes
thus occa-
sioned.

This passage from William of Malmesbury has been the occasion of very great mistakes, some writers hostile to the Coif having misconstrued the meaning of the words, and read them as if they recorded the fact that when they were written *none but ecclesiastics could legally practise the law*. In one of the volumes of his 'Lives of the Chief Justices,' Lord Campbell speaks of the clerical tonsure as having been up to the end of the thirteenth century *an indispensable qualification* for a practitioner at the Bar,³ and on several other occasions

The clerical
tonsure
and the
coif.

¹ In the Register de Abindon in the Cotton Library, Claudii, C. 9, fol. 138, an. 1342, is an enumeration of occasions when the bishop and monks and clerks in orders were sent for to discuss, and instruct the ordinary courts in, the ancient laws and customs of the land.—Orig. Jur. c. 8.

² The chronicler, after describing many abuses of the age, goes on to say that "Nullus dives nisi nummularius, nullus clericus nisi causidicus, nullus Presbiter nisi firmarius." William of Malmesbury, *De gest. Reg. Angl.*, A.D. 1093, lib. 4, c. 315.

The character of some of these clerical lawyers does not appear to have been of the highest stamp. Ranulphus Flambard, who under William Rufus rose to be Chief Justiciar, see *post*, p. 62, is described by William of Malmesbury as "Clericus ex infimo genere hominum linguâ et calliditate proventus ad summum . . . invictus causidicus et factis tam verbis infidelis." W. Malm. 314.

³ In the life of Ralph de Hengham, Chief Justice in 1278, Lord Campbell says, "*without the clerical tonsure he became a candidate for business at the Bar*; but such was the belief that the character of Causidicus and Clericus must be united, that to further his success he was obliged to take holy orders, and he was made a canon of St. Paul's."—Campbell's 'Lives of the Chief Justices,' vol. i. p. 72, note.

Lord Campbell makes the same mistake. Leaving for the present the subject of the connection between the clerical tonsure and the Serjeants' coif, and the blunders and inaccuracies of writers who have undertaken to tell us all about it, we had better look to the actual rules which affected ecclesiastics becoming Conteurs and practising as advocates in the secular Courts.

Positive
rules as to
clerici
causidici.

As early as 1164, it was solemnly ordained that taking holy orders should operate as *an absolute disqualification* for practice in the legal or medical professions;¹ but eighty years afterwards the Church was again called on to lay down the law; and at the fifth council of Lateran, the clergy were solemnly warned not to appear on any occasion as advocates in the secular Courts, *except in causes affecting themselves, or on behalf of the poor or distressed.*² Tardily as it would seem was the prohibition complied with, reluctantly the clergy gave up an employment at once so profitable and congenial to their habit of mind. The sons of the Church were loath to leave the secular Courts; and the easy pretext of affording aid to the unhappy, or looking after the sacred interest of the Church, served to keep up the supply of clerical lawyers long after the Church had enjoined her sons to wash their hands of the work of the secular Courts: and it was not until the middle of the thirteenth century that Westminster Hall saw the last of the *Cleri causidici*.³ Some of the rules and

Tardy compliance with these rules.

¹ "Post votum religionis nullus ad physicam vel leges mundanas legendas permittetur exire."—Seld. diss. ad Flet, 579.

² "Nec advocati sint clerici vel sacerdotes in foro seculari, nisi vel proprias causas vel miserabilium personarum prosequantur."—Spelman, Council sub an. 1217.

³ Among the Canons of St. Paul's in the reign of Henry III. were as many as ten of the Judges at Westminster Hall. See Dugdale, Orig. c. 8.

usages, and of the costume of the order, were possibly derived from the cloister: but there is nothing beyond this to identify the Brothers of the Coif with the Church.

The Coif
never an
ecclesi-
astical
order.

In the thirteenth century there had arisen especial reasons for the Order of the Coif being emancipated from ecclesiastical trammels, and for a sort of antagonism existing between the legitimate professors of the common law and the clergy, whose legal acquirements seem to have consisted in merely reading scholastic editions or abridgments of the Pandects and the canonical rules.¹ It is evident that the various notions entertained as to the Order of the Coif having a merely ecclesiastical origin, and as to there having ever been a legal necessity for the status of Clericus and Causidicus being united, or for the Serjeants-at-law or the Judges of Westminster Hall having the *tonsura clericalis*,² are altogether unfounded. The old Serjeant Counters were certainly altogether a common law and not an ecclesiastical institution.

Many mis-
takes and
misstate-
ments
made as to

Mistakes or misstatements as to the origin and early history of the order are to be found in the *obiter dicta* of careless writers. Mr. Daines Barrington,³ hereafter

¹ It took more than two centuries to finally defeat the schemes of the clergy to give to the Roman civil law the upper hand here over the old common law; counting from the proclamation of Stephen against schools for teaching the civil law to the memorable protest of the Barons in the time of Richard II. "that the realm of England hath never been unto this hour neither by the consent of our Lord the King and the Lords of Parliament shall it ever be ruled or governed by the civil law."—Selden, *Jur. Angl.*, 1, 2, § 43; Selden in *Fort. c.* 33.

² The 'Mirror of Justices' specifies among the personal disqualifications of a Counter, that he be heretic, excommunicate person or criminal, or "man of religion," or within the orders of a subdeacon or a beneficed clerk, etc. See *ante*, p. 8.

³ Observations on ancient Statutes, 223.

PLATE I.



MR. SERJEANT PULLING.

referred to,¹ seems to have gone out of his way to lug in gross and silly misrepresentations on the subject; and in the biographical volumes of Lord Campbell there are certainly remarkable instances of such mistakes or misstatements, e.g. where, in an authoritative manner peculiar to the author, he explains to his readers the origin of the Coif, and of the Serjeants-at-law, and the connection between the badge of the order and the clerical tonsure, etc.²

the origin
and history
of the
order.

It is hardly possible to believe this writer really ignorant of what in the days of his black-letter predecessors at Westminster Hall would have been deemed common knowledge; and however strong Lord Campbell's bias against the Coif, we should hesitate in imputing to him that he could be guilty of *intentional* misrepresentation with regard to the order to which he and all his predecessors for so many ages belonged.

It may happen that to some of our readers it is not even known what the Coif really means. A few words on this subject therefore will not be thrown away. There will be observed on the crown of the wig of the Lord Chief Justice and of some of his brother Judges, and a few of the occupants of the front seats at the Bar in the Law Courts, a round space covered by a small piece of black silk apparently edged with white. This will be seen in Plate I. taken from the photograph of a member of the order.³ The round patch passes off among the uninformed as "the coif." It certainly is not so—the quaint device, unlike the actual coif of the

The Coif
the real
badge of
the order
now im-
perfectly
shown.

¹ See *post*, pp. 21-29, n.

² See *post*, p. 21.

³ Not being able to find any picture of a Brother of the Coif displaying with sufficient distinctness the badge of the order as now worn, I found it necessary to sit for the purpose myself.—A. P.

order, has not antiquity to recommend it—having been introduced at the beginning of the last century, when the fashion of powdered wigs in lieu of natural hair having reached Westminster Hall, it became necessary that the head-dress of the Judges and Serjeants of the Coif should not altogether hide the honourable badge of the order: and as on the top of *the white coif* the old fashion had been for the Judges and Serjeants to wear a small skull-cap of black silk or velvet,¹ the peruquiers of the last century contrived the round patch of *black and white* as a diminutive representative of *the coif and cap*. We shall have occasion hereafter to recur to this matter when we come to deal with legal costume and the changes it has undergone.²

The old
and
legitimate
form.

The real coif which is described by Chief Justice Fortescue,³ as the “principal and chief insignment of habit wherewith Serjeants-at-law on their creation are decked,” in its original state was of *white lawn or silk*, forming a close-fitting head covering, in shape not unlike a Knight Templar’s cap.

The word Coif is old, and spelled in various ways.⁴ It was used as well to designate the iron skull-cap or *coif de fer*⁵ worn by the military in the thirteenth century, the cap of chain or *coife de mailles* of the knight, and the head covering or *coif de toile* worn under the knight’s helmet,⁶ as the *berretta* or head-dress of the

¹ See the head-dress of Lord Coke, Plate VI.

² See *post*, ch. vii.

³ De Laudibus Leg. Angl. c. 50.

⁴ Coif, coyffe, cuphia, coifea, quioffe, quaif, etc.

⁵ The Military *Loricula* cum coifeâ ferreâ is referred to by Madox, *Formulare Angl.* p. 423.

⁶ Froissart, in tome 4, ch. 5, describes a rencontre at a tournament at Bourdeaux between two knights, who used such force as to knock off their helmets, and to oblige them to finish the contest bareheaded excepting

Italian priesthood, the introduction of which into England has recently been as much the subject of angry clerical controversy¹ as it seems to have been six centuries back.²

The Berretta seems always to have denoted authority, as the cap of the doctor carried with it the idea of learning;³ and in some instances we find the two words coif and birretta used as if they were synonymous—the clerical birretta being in the laws of the Church called a coif;⁴ and the Serjeants' coif being described by old writers as the birrettum album.⁵

Difference
between
the coif
and the
berretta.

their "coffes," or coyves, tome 3, c. 50; and Froissart in another place describes the Comte D'Armagnac as taking off his steel bascinet and remaining with his head uncovered save only a coiffe de toile.

¹ See *Elphinstone v. Purchas*, 5 Law Rep. Adm. & Eccl. Cases, 66; *Martin v. Mackonochie*.

² "Clerici non nisi in itinere constituti unquam, aut in ecclesiis aut coram Prelatis suis, aut in conspectu communi hominum, publice infulas suas (vulgo coyfas vel coifas vocant) portare aliquatenus audeant vel presument."—Greg. Decret. lib. i. c. 15, 16, A.D. 1201; Constit. Othob. Concil. Lond. 1268; Lindw. Prov. 68. There are canons of an earlier date prohibiting the clergy from wearing calottes or coiffs of linen. Long after the Reformation some of these old rules had to be revived, the 74th Canon of 1604 providing that no ecclesiastical person shall wear any coif or wrought night-cap, but only plain night-caps of black silk, satin or velvet. Calotte is the French word for the small skull-cap worn over the tonsure, and hence the phrase *Régime de la Calotte*, or *rule of Ecclesiastics*. A club of wits in the time of Louis XIV. bore the name of *Régiment de la Calotte*: and it was their humour when any man of note made himself ridiculous to send him a calotte "to cover the bald or brainless part of his noddle." An Italian phrase has reference in another way to the same idea of this connection between want of brain and the clerical head-dress. The rash man is said *avere il cervello sopra la birretta*. With the clergy in England the rashness appears to have been more perceptible in the show of the *birretta* without the *cervello*.

³ "Non cappa quippe Doctorem facit, non birretta magistratus impositio."—Selden, Note to Fortescue, c. 50, note (k).

⁴ See *ante*, p. 14.

⁵ In one of Selden's Notes to Fortescue, De Laud. Leg. Angl., he describes the birrettum album as *capitis tegmen lineum, tenue strictum; forma ipsius cranii vel cassidis*. "*Hoc insigniuntur qui supremam in jure nostro palmam ferunt, servientes ad legem dicti*."—Matt. Paris, 646.

The coif a
mark of
rank and
dignity.

Conferred
with great
ceremony.

Coif
always to
be worn,
even in
Royal
presence.

Old esti-
mation of
the privi-
lege and
obligation.

It is unquestionable that the coif of the Serjeant-at-law has always represented, like the coronet, the helmet, and the mitre, distinct rank and dignity;¹ and has from time immemorial been conferred with much form and ceremony.² The wearing the coif, as new brothers of the order were reminded, was obligatory, and, like the "*droit de parler couverts*" belonging to the leaders of the French Bar,³ was not to be neglected on any occasion when officially or professionally engaged; and, as a peculiar mark of honour and distinction, the Brothers of the Coif had the privilege of remaining covered even in the Royal presence.⁴

The obligation to display the coif was in old times always very solemnly impressed on the members of the order, especially in the elaborate addresses made to them by the Lord Chancellor on their being *created*; and it is remarkable that in the case of a Serjeant-at-law being

¹ At the Heralds' College the coif is treated as a species of helmet, and always represented like the knight's helmet with the visor open. See *post*, tit. Costume. In the Middle Ages the covering the head with the birrettus formed part of the ceremony of important appointments, e.g. a Prefecture. See Du Cange.

² See below.

³ "Les avocats ayant le droit de parler couverts, ils ne peuvent même devant les chambres législatives. Car partout où ils exercent leur ministère ils doivent l'exercer avec les honneurs et prérogatives qui y sont attachés." —Domat, *Droit Public*, liv. 2, 6.

⁴ Neither the Justice nor yet the Serjeant shall ever put off the quoiffe, no not in the King's presence, though he be in talk with his Majesty's highness.—Fort. De Laud. *Leg. Angl.* c. 50, p. 116.

Fuller, *Church History*, part ii. p. 167, tells us that "one Mr. Brown had letters patent confirmed by Act of Parliament to enable him to put on his cap in the presence of the King or his heirs, or any Lord, spiritual or temporal, in the land."—Waterhouse; Fort. *illustr.* 562.

The De Courcys, Barons of Kinsale, certainly had a similar privilege by hereditary right.

The head of the Guzmans (the Duke of Medina Celi), as hereditary defender of the faith, *rides* into church with his helmet on.—Manning, S.L., '*Serviens ad legem*,' p. 265, note (c).

formally discharged from his position,¹ the discharge has always contained an express release from the obligation to "wear any quoif, commonly called the Serjeants' quoif, etc.,² and all other apparel, garments and habits, that by the laws and customs of the realm he should or ought to wear as Serjeant-at-law." A badge of honour during life, the coif was represented on the monument of the departed brother of the order. The coif is so displayed on the monumental effigies of many distinguished Judges and Serjeants.

The woodcut in Plate V. represents the monumental effigies of Littleton, the oracle of old English law, with his plain white coif.³

In the effigies in Harwood Church of Sir William Gascoign, the famous Chief Justice of Henry IV. and Henry V., the coif⁴ appears parted in the middle. In the effigy in Narburgh Church, Norfolk, of Sir John Spelman, another distinguished Brother of the Order

Effigies of
Gascoign
and Spelman.

¹ See on this subject of discharge, *post*, p. 218.

² See the discharge of Serjeant Fleming, quoted *post*, p. 218; Randolph Rokeby on being appointed Justice and Commissioner in the North.—Dugdale, c. 54; Wynn's *Ser. ad leg.* 267.

³ The original of this effigies appears to have been in stained glass, forming one of the windows in Worcester Cathedral, there being another of the same form in the parish church of Hagley or Hales-Owen, where the old residence of his descendants, the Lords Littleton, is situated. In Collins' *English Peerage*, vol. vii. pp. 428, 434; vol. viii. p. 323, ed. 1779, these windows are spoken of as having been in good preservation up to a recent date, but no traces now remain. See Sir E. Brydges' note to Collins. As stated elsewhere, the engraving from the old effigies is the only picture yet remaining of the famous English lawyer, Thomas Littleton. The picture in the Inner Temple Hall, which is erroneously supposed to represent him, is that of Edward Lord Littleton of Mornington, Lord Keeper of the Great Seal in 1641, painted about one hundred and sixty years after the death of, the most famous Judge.

⁴ Engravings of this effigies are given in the work entitled '*Sepulchral Monuments of Great Britain*,' vol. ii. p. 37; and there is a good woodcut in Planche's '*Cyclopædia of Costume*,' p. 427.

living a century afterwards, the white coif appears completely covering the head.¹ There are abundant other monumental records of the Coif,² and woodcuts of three of them are here given from Dugdale.³

Effigies of
Howard
and others.

The figures in Plate II. are taken from effigies still in existence in the church of Long Melford, Suffolk, being those of William Howard,⁴ the Judge of the Court of Common Pleas at the end of the thirteenth century, and John Haugh, Judge of the Common Pleas in 1487, and of Richard Pycot or Piggott, one of the King's Serjeants-at-law in the latter part of the fifteenth century.⁵ Dugdale supplies us for the same purpose with a woodcut from an old effigy of Sir John Cokain, Chief Baron, and Judge of the Common Pleas during the reign of Henry IV., Henry V., and Henry VI.

Coloured
pictures of
Courts at

The Serjeant's coif as worn in the fifteenth century is well shown in some coloured pictures of the Courts at

¹ This effigy is given in Cotman's *Norfolk Brasses* and in Planché's 'Cyclopædia of Costume' side by side with that of Gascoign. The family of the Spelmans were closely identified with the law. Sir John Spelman was created Serjeant-at-law 1521, made King's Serjeant 1528, and Judge of the King's Bench 1532. He was one of the Commissioners on the trials of Sir Thomas More and Bishop Fisher, and it would seem also of Anne Boleyn. See *State Trials*, vol. i. pp. 387, 398, 412.

² See 'Sepulchral Monuments of Great Britain,' vol. ii. p. 247.

³ See *Orig. Jur. c.* 38, p. 101.

⁴ Sir William Howard or Haward, ancestor of the Dukes of Norfolk, and many others of the old English nobility, was created a Serjeant-at-law before 1293, when his name appears in the Assize Commissions. From 1297 to 1309 he was a Judge of the Court of Common Pleas, and he is mentioned in the Rolls of Parliament, 1 Rot. Parl. 178, 218, as holding other judicial offices. From the inscription in the church window at Long Melford, it would seem as if he were *Chief Justice*; but this is supposed to be a mistake, the window not having been erected till nearly two centuries after Sir William Howard's death. See on this Foss' 'Judges of England,' p. 357. The effigies of Sir John Cokain was in Ashbourne Church, Dorsetshire, but there is now no trace left of it.

⁵ See Plate III.

In Fenestra Vitreata ex parte Aquilonali Ecclesie de LONG MELFOR.
in agro Suffolcienſi.



Pray for the good state of William Haward chef Justis of England
Ye for Richard Dycot & John Haugh Justis of the lawe

In Ala ex parte Boreali Ecclesiæ paroch: de ASHBVRNE in Com: Derb:

Tumuli alabastrum IOHANNIS CORAIN primo Capitalis
Baronis de Scaccario deinde unius Iusticiarii et de Communi
Banco sub Rege HENRICO III.^o accurata effigies.



Westminster from illuminations in an ancient law book, temp. Henry VI.; these appeared in the *Archæologia* of the Society of Antiquaries for 1846, with useful and learned notes of interest by the late George R. Corner, F.S.A. One of them, representing the Court of Common Pleas, is, by the courteous permission of Mr. Selby Lowndes (the owner of the picture), and of the Antiquarian Society, reproduced in the Frontispiece to the present work, and in the engravings, also now reproduced here, by permission, from the *Vetusta Monumenta* of the same learned society (Plate IV. from a curious painted table in the King's Exchequer, temp. H. VII., and Plate VII.), representing the Court of Wards and Liveries as it was depicted in the beginning of the reign of Elizabeth, the white coifs of the Serjeants are even more conspicuous. The monumental representations we have just referred to will suffice further to explain the old distinguishing badge of the Order of the Coif. What was its precise origin it is not easy to say. There have been certainly sufficient conjectures on the subject, and, as generally happens when conjectures are indulged in, a good deal of the improbable introduced, with a very small amount of actual information. Fortescue, Coke, Dugdale, are silent on the subject of the *actual origin* of the coif, but a loose conjecture in Spelman's Glossary,¹ founded on a story told by Matthew Paris, and which appears in a note to Blackstone's Commentaries,² carelessly copied into various editions, has induced the notion that the coif was a device merely to conceal the clerical tonsure.

The story told us by Matthew Paris is, that in the time of Henry III. a certain William de Bussey, a person

Westminster,
temp.
Henry VI.

Refutation
of various
conjectures
respecting
the coif.

Story of
William de
Bussey,
time of
Henry III.

¹ 335, tit. Coif.

² See 1 Bl. Com. 24, note (t).

of very questionable antecedents, with high connections¹ but low principle [at one time ecclesiastic, at another holding civil offices, or following the legal profession], contrived to pass himself off as a Brother of the Coif: and, being prosecuted according to law for a variety of offences, he was tried and convicted; and then, in order to screen himself from punishment, he set up that notwithstanding his appearance in Court as a Serjeant Counter, he was really a clerk in holy orders, and thus privileged, was entitled, when proceeded against in a Court secular, *to his benefit of clergy*.² The story goes on, that in support of his claim De Bussey offered to remove the coif, and openly show that he had the clerical tonsure, but he was not allowed to do so. His sentence came, and in spite of his coif and his tonsure and his high connections, he was ignominiously dragged off to prison and to punishment.³

¹ He seems to have been Steward and Chief Counsellor, *Seneschallus et principalis consiliarius* to William de Valencia, the brother-in-law of the King referred to in the Rolls of Parliament. 1 Rot. Parl. 16a, 17a, 30a, etc.

² For the sake of my unprofessional readers it may be as well to refer here to the old rules of our law on this subject. The *benefit of clergy* was the privilege of clerks in holy orders charged with criminal offences to be delivered over by the lay judge to be dealt with by the ordinary. The test used to discover whether the accused was *clericus*, or an impostor, was sometimes very elaborate. See on this Stamford's Pleas of the Crown, cc. 42, 43; but soon after the Reformation, a statute, 18 Eliz. c. 7, practically put an end to the old privilege by enacting that any convict claiming the benefit of clergy should merely be put to read from the dock in the presence of the ordinary or his representative, and if the latter pronounced the words "*legit ut clericus*" the benefit of clergy was to be allowed, the culprit burnt in the hand and discharged, provided it was the first offence—"neck verse," as they called the culprit's task, was the first verse of the 51st Psalm, "*Miserere mei*." The showing the tonsura clericalis to secure the benefit of clergy was legally necessary long after the time recorded by Matthew Paris. Thus, in 1387, the benefit of clergy was refused to a convict *who had not the tonsure or clerical habit*. See Year-book, 20 E. 2, coron. 333, and cases cited in Hobart, 288.

³ "*Voluit ligamenta coiffæ suæ solvere ut palam monstraret se tonsuram*

That this incident was the origin of the coif being worn by the Serjeants-at-law, is certainly not suggested by Matthew Paris: but in Spelman's Glossary¹ this old story is referred to; and Sir Henry Spelman starts a conjecture of his own, that possibly the coif was originally designed to *hide the tonsure of such ecclesiastics as persisted in acting as advocates in the secular Courts* in defiance of the legal regulations and constitutions of the Church made to prevent them.² The coif, however, had been in use ages before the incident mentioned by Matthew Paris, or the rules and constitutions prohibiting the clergy from acting as advocates, judges or assessors, in the secular Courts;³ and the coif continued in use exactly in its old form long after the clergy, and the legal profession, and the clerical tonsure and the Serjeants' costume had any connection with one another. The conjecture therefore in Spelman's Glossary as to the association between the coif of the Serjeants-at-law and the tonsure of the monk will not bear criticism.

Sir H. Spelman's conjecture in reference to this.

The few careless words, however, in Spelman's Glossary, though not having any weight with lawyers in Spelman's own time,⁴ have since been quoted by annotators of Blackstone's Commentaries and other writers, as though distinctly showing that the Serjeants' coif originated in a mere device to conceal the clerical tonsure; and Lord Campbell, whose genius for turning

Many careless mis-statements occasioned.

habere clericalem, sed non est permissus. Satelles vero eum arripiens non per coiffæ ligamenta, sed per guttur eum apprehendens, traxit ad carcerem."—Matthew Paris, Hist. England, 1259.

¹ Tit. Coif.

² *Ante*, p. 11.

³ These date back to the latter part of the twelfth century. See *ante*, p. 11, and Lindwood, *Constitutiones Anglicæ*, 88, 91.

⁴ See charge delivered to New Serjeants by Lord Commissioner White-lock, 1648.

to account other men's suggestions and labour was very great, but whose occasional blunders in so doing are already referred to,¹ seems to have readily adopted the notion of the alliance in some way between the coif and the clerical tonsure; but, either forgetting the precise form of Sir Henry Spelman's conjecture, or inclined to make the idea of such alliance chime in with his own crotchet as to the legal necessity in old times of the character of *clericus* and *causidicus* being united, informs his readers, *more suo*, that "it was to conceal *the want of the clerical tonsure* that the Serjeants-at-law adopted the coif or black velvet cap, which became the badge of the order."²

As will be seen in this account, Lord Campbell, in addition to other mistakes, confounds altogether the traditions about the tonsure and the coif. The old version of the matter was, that the possession of the clerical tonsure constituted a legal *disqualification* for practice in the secular Courts, and that the coif was an invention to hide the tonsure. The idea to be conveyed to us by Lord Campbell is, that in the thirteenth century the tonsure was *required as a special qualification* for the Bar. In other passages Lord Campbell first calls the coif the *black velvet night-cap*,³ and then tells us it is really the *Judges' sentence-cap*—thus persisting in the

¹ See *ante*, p. 12; *post*, p. 23, 62, 63, 77, 81, 93, 103.

² "It was to conceal the want of the clerical tonsure that the Serjeants-at-law, who soon monopolised the practice of the Court of Common Pleas, adopted the coif, or *black velvet cap*, which became the badge of their order."—'Lives of Chief Justices,' vol. i. p. 72.

³ "Hale was particularly severe on attorneys who wore swords; and he expressed high displeasure at the young barristers who wore periwigs, which were then beginning to be fashionable, apprentices having hitherto appeared in their natural long locks, and *Serjeants being adorned with a coif or black velvet night-cap*."—Ch. J. vol. i. p. 585.

indecorous blunder which confounds the ordinary judicial head-dress, the coif, and the dread sentence-cap. Lord Campbell actually informs his readers, that in the middle of the seventeenth century, the Common Law Judges adhered to their *black cloth caps, which they still put on when they pass sentence of death.*¹

Such statements as to the origin of the Serjeants' coif, based as they are on no recorded fact or reliable authority, may well be allowed to pass with other "right merrie conceits"² as of small value, even by way of jest or entertainment. The learned Selden makes out the coif of the Serjeants-at-law to have been the badge of the order for more than seven hundred years, and, with

Other
curious
fancies.

¹ "In the middle of the 17th century the common law judges adhered to their coifs, or black cloth caps, which they still put on when they pass sentence of death."—'Lives of Chief Justices,' vol. ii. p. 482. The mistakes or misstatements in these passages as to the clerical tonsure and the coif and the black velvet cap, and the Judges and Serjeants generally, are very striking, but hardly more so than some other misrepresentations with reference to the coif, to which we shall have occasion to refer.

These and other misstatements of Lord Campbell with regard to the coif are indeed strange (coming from a man who became a member of the order, and Chief Justice even, under very remarkable if not awkward circumstances); but joined with his unjustifiable conduct with reference to the order when Attorney-General (*post*, page 104), and the ill-feeling against the Serjeants displayed in his writings, they serve to show what small scruples he had on the subject.

² One of these conceits, recorded in Brand's 'Popular Antiquities,' is that the coif, in imitation of the child's caul, was in the good old days of superstition worn on the advocate's head for luck (vol. iii. p. 114), quoting the following from an old work about a child's caul being sometimes carried for luck:

"Quelques enfans viennent au monde avec une pellicule qui leur couvre la tete, que l'on appelle du nom de coëffe. Ce qui a donné lieu au proverbe français, selon laquelle on dit d'un homme heureux qu'il est né coiffé. Ou a vu autrefois des avocats assez simples pour s'imaginer que cette coëffe pouvoit beaucoup contribuer a les rendre eloquents, pourvu qu'ils les portassent *dans leur sein.*"—'Traité des Superstitions,' 120. Par. 1679 p. 316.

such an authority to rely on, it is needless to say more about these stupid conjectures or misstatements of legal writers, or the silly conceits of the merely ignorant. The old coif of the Serjeants-at-law, as observed in the 'Edinburgh Review,' was in fact an honourable and distinctive head-dress, corresponding to the helmet of knighthood, and it is certain that the Heralds have always marked this identity; the heraldic helmet of Knight and Serjeant-at-law being in the same form, with the beaver open, whilst the helmet of the Esquire has the *beaver closed*.¹

Title, rank,
or dignity
of ser-
jeantry.

The title, rank, or dignity² of *Serjeant* given to the old *Conteurs*, making them *Serjeant Counters*, *Serjeants of the Coif*, *Servientes ad legem*, or *Serjeants-at-law*, has belonged to the order upwards of eight hundred years; for it seems to have been acquired soon after the Conquest. The feudal system, soon firmly rooted here, treated the tenure of land and of dignities, honours and offices, as alike derived from the Crown, such tenure involving *feodale servitium*, or *serjeantry*:³ the chief and most honourable Serjeantries being those which admitted of no patron or superior but the King.⁴ Serjeantry attached to the tenure of land was known by the name of Serjeantry appendant, and in Normandy *Serjeanterie glebee*, and when not so attached, but in itself involving services of honour or dignity, it was called "Serjeantry in gross," or *Serjeanterie sans terre*,

Feudal
tenure by
serjeantry.

Serjeantry
appendant
and Ser-
jeantry in
gross.

¹ Ed. R. Oct. 1877, p. 42.

² "Serviens ad legem est nosme de dignité, comme Chevalier, et est un degree."—Brooke's 'Abridgment,' nosme de dignité, Year-book, 35 H. 6-55.

³ Coke says that in old times every Barony was held by Grand Serjeantry—2 Co. Rep. 81 a; Co. Rep. 74 a.

⁴ "Inter foedalia servitia summum, et illustrissimum, quod nec patronum aliquem agnoscit præter regem."—Selden, tit. hon.

and in each case the holder seems to have been known by the personal designation of *Serjeant*, unless indeed he happened to enjoy also the superior rank of Earl, Baron, or Knight.¹

The tenure by Grand Serjeantry in former times marked the position of not a few of the magnates and grandees of England. The office of Earl Marshal² and Lord High Chamberlain have been so held for many centuries; and so, in old times, was that of Lord High Constable³ and Lord High Steward⁴ and many others.

Grand
Serjeantry.

The Serjeants by tenure are constantly referred to in our statute books and the Rolls of Parliament. They had, like Knights, various grades from "the simple Knight and Serjeant" mentioned on one occasion⁵ to the

Various
grades of
Serjeants
by tenure.

¹ This gradation is well recorded in the laws of William the Conqueror respecting military obligations, providing "ut omnes comites et barones et milites et *servientes* et universi liberi homines, totius regni nostri habeant et teneant se semper bene in armis et in equis, ut decet et oportet."

² In 1483 this high position was conferred on Sir John Howard, the dauntless "Jockey of Norfolk," who, in the following year, fell at Bosworth Field. The Dukes of Norfolk have held it in Grand Serjeantry ever since, with the exception of the several periods during the Wars of the Roses, when the noble holders were on the losing side, and had to give up both honours and estates, to have them restored to the family when fortune again smiled on it.

³ See on this, Com. Dig. Office E. 2, 2 Inst. 29; Stamford, Pl. Cor. 65.

The Bohuns held the manors of Harlefield, Newnam and Witenhurst in Gloucestershire by the serjeantry of the office of Constable of England. (Co. Litt. 106 a.) This serjeantry seems to have given rise to a great deal of litigation and contest between the descendants of the Bohuns in the time of Henry VIII. (Keilwey, 170, pl. 5.) It had been for ages the especial object of dread to the Crown. At length, when the last holder, Stafford Duke of Buckingham, was attainted, the office was discontinued, only revived on state occasions, as at coronations, &c. See on this, Dyer, 285, pl. 39.

⁴ The Barony of Hinkley was held by the service of Lord High Steward of England, a position which, according to Coke, gave him authority to superintend and rule *sub-Bege, totum regnum et omnes ministros legum tempore pacis et guerræ*.—4 Inst. 58.

⁵ Pray the Commons that henceforth no simple knight or serjeant be

Knights and Serjeants *des mults vaillants* referred to on another occasion, as those to be impannelled on the Grand Assize, or the Serjeants eligible to be returned to Parliament as Knights of the shire.¹ A record of certain Serjeantries by tenure in capite in the thirteenth century is preserved in a register of that time entitled *Testa de Neville*,² and from this work copious extracts are given in one of the notes to Mr. Serjeant Manning's elaborate report of the proceedings before the Privy Council in 1834, in what is generally called "*The Serjeants' Case*."³

Extracts
from Testa
de Neville.

It is not within the scope of the present work to dwell on the subject of serjeantry attaching to tenure of land held in capite, and its belongings, honourable or onerous, or the classification of the King's tenants in capite as those who held by "Grand Serjeantry," and those that held by "Petty Serjeantry," and the gradual disuse of the one and the other, long before the time of the

Distinction
between
grand and
petty
serjeantry.

charged with commissions that require account.—2 Rot. Parl. 140 b, 17 Edw. III.

¹ In 1349 the four knights sworn to elect the Grand Assize were directed to elect no serjeants whilst they could find covenable knights.—M. 22 Edw. III., 18 F. challenge.

A few years after, the directions were, that the four knights should choose sixteen knights of themselves and others; and not being able to elect so many knights within the county, they were told, after electing three knights, to choose the rest *dez multz vaillants serjeants*.—H. 26, Ed. III., fol. 57, pl. 12.

See Fitz. Abr. droit, 37.

² The *Testa de Neville* is a register officially compiled in the time of Henry III. and Edward I., and contains a record of lands and tenements held of the King *in capite*, and of the special serjeantries or servitia reserved. *Testa de Neville* was in 1814 printed by the Record Commissioners from the original in the King's Remembrancer's Office. Copies are to be found in most of the public libraries.

³ '*Serviens ad legem*, or report of the proceedings in relation to the warrant for the suppression of the ancient privileges of the Serjeants-at-law,' by James Manning, Serjeant-at-law. London, Longman, 1834, Note LXX. pp. 296-303.

Commonwealth, when the entire institution of feudal tenures was upset.¹ The Country Serjeants, as the ordinary tenants by Serjeantry came to be called, appear at one time to have been a very numerous body, including as well the *multz vaillants*, already referred to,² as the franklin and more humble of the King's tenants,³ some of them being doubtless men of good social rank, and others in a comparatively humble position. They seem, however, all to have held a well-recognised status, about which there is little reason for the mistakes occasionally made by the uninformed, such as that of confounding *Serjeants* with the petty officers called *Sergeants*.⁴

Large body of serjeants by tenure, or country serjeants.

Blunders made by the ignorant in

¹ The 12 Car. 2, c. 25, was, for the most part, but a re-enactment of the act of the Commonwealth in 1652.

² See *ante*, p. 26.

³ In a subsidy granted in 1379, which assesses the judges, serjeants, and great apprentices of the law at sums from 100s. to 20s., the *serjeants* and the *franklins of the country* are placed in the lowest scale according to their estate, at 6s. 8d. and 10d.

The franklin is described by Chaucer (*Prolog.* line 333) as if retired from active life, and enjoying the *otium cum dignitate* of one of the "landed gentry."

"A Franklein was in this compaignie.
White was his berde, as is the dayesie.

At Sessions there was he Lord and Sire;
Full often times he was knight of the shire.
An anelace and a gipcier vale of silk
Hung at his girdle white as morwe milk.
A sherive had he been and a *countour*,
Was no where swiche a worthy vavasour."

The description here is of a country gentleman who had been in his time, Coroner, Foreman, or *Counter* of the jury, and *Sheriff*. See Tyrwhitt's notes to Chaucer, *ib.*

⁴ The resemblance between the word *serjeant* and *sergent* or *sergenti* has occasionally caused mistakes and blunders among the ignorant or careless. The origin as well as the meaning of the two words, however, differ. Sufficient information will, we hope, be found in the text as to the *serjeants-at-law*, and the serjeants by tenure of land or office or dignity, but it will be well in this place to refer to the petty officers known, not only in this country but in France and Italy, as *sergents*, *sergeants*, or *sergente*.

confounding
ser-
jeants with
sergents.

Long before the old feudal tenures were abolished¹ a variety of circumstances had tended to reduce the

The army sergent, or sergeant, appears to have been originally the messenger, or satelles of the Guard—*bas officier d'infanterie*—and in time came to have defined military duties, next above a corporal. The London and other police forces, organised in some respects on a military basis, have also sergeants who rank next above ordinary constables. The petty officers in corporate towns, usually called *sergens* or *sergeants-at-mace*, have the place of the old satellites, or messengers attending the mayor or sheriffs, the older word *satelles* having, for the most part, gone into disuse, except so far as the term *satellites* preserves the idea of such hangers-on. There seems formerly to have been a large band of sergeants-at-mace in attendance on the mayor and sheriffs of London when acting in their official capacity, and this was the case also in other corporate towns (see Kitchen on Courts, 143); all the justices in Eyre had attending on them sergeants or tipstaves. (See Statute of Westminster 1, 3 Edw. I., c. 30.) In the English edition of the New Testament the word *ῥαβδούχοι* (lictors in attendance on the magistrates, Acts xvi. 38) is translated "serjeants" both in the old and revised edition. The ceremonial duties of sergeants-at-mace of the City of London are made the special subject of regulation in some of the City charters, such as those authorising the Lord Mayor and Sheriffs to have *maces the same as royal* carried before them, and limiting the number of such officials. See Liber Albus, tit. 1, part 2, c. 2.

An Act of Common Council quoted by Mr. Norton (Commentaries on the City of London Charters, 3rd edition, 338), provides that the Sheriffs retain but three or four sergeants at the most, "that the people be not oppressed."

The City Sergeants had other and less pleasant duties than attending Corporation pageants. As Sheriff's officers they had to execute the process of the Court, whether in levying on the defaulter's goods or arresting him, and they got the name of *Catchpoles*. In old plays the system of fraud and extortion of the City sergeants-at-mace is constantly made the subject of satire. See, amongst others, Davenant's play of 'The Wits,' Middleton's 'Roaring Girl,' etc.; and Shakespeare makes Hamlet say:

"Had I but time (as this fell sergeant, Death,
Is strict in his arrest)"—Act v., sc. 2.

And the sergente in Italy do not seem to have been a more popular body. Ariosto, in the 'Orlando Furioso,' canto xxviii., stanza 42, says:

"Perchè trovata avea la disonesta
Sua moglie in braccio d'un suo vil sergenti."

¹ 12 Car. 2, c. 24, which is for the most part but a re-enactment of a statute of the Commonwealth, the amendment upon the latter being that the ceremonial part of Grand Serjeantry should be preserved.

number of tenants by serjeantry. There was indeed practically no way of keeping up the number except by constant new grants. Lands held in serjeantry could not be aliened without the King's licence. The serjeantry or service secured on the land remained as long as the grantee or his heirs continued to hold the land in its entirety, but if any portion of the land was proposed to be sold or otherwise aliened, a very special and elaborate arrangement was required. The serjeantry had to be *arrented* or charged exclusively on that part of the land which remained in the possession of the original grantee or his heirs;¹ and in the old book already referred to² will be found a large number of entries of serjeantries *arrented*, or saddled on the portion of the land retained by the actual serjeant, after a partial sale or partition.

Gradual
discontinu-
ance of the
serjeants
by tenure.

By this process, in time, the serjeants by tenure of land, although not within the Act for the abolition of military tenures, were practically put an end to; all that was kept alive out of the old system of serjeantry by tenure being mere matter of ceremony.

Lord Coke, loyal to his profession, maintained that it

Daines Barrington, a writer of the last century, not certainly of much authority, who had a grudge against the Order of the Coif, goes out of his way in one of his "notes" on the ancient statutes, p. 223, to lug in the above lines, with no other apparent design than that of having *Vil Sergenti* misconstrued into Serjeant-at-law; but as the same writer in another place displayed his spite by pretending to identify the Serjeants-at-law with the *fratres servientes* of the monasteries, he did not thereby succeed in doing much harm to the old order or much good to himself. It is a very stale and dull joke often played by shallow wits to pun upon the words *serjeant* and *sergent*, but the notes just referred to are not written in a fit of pleasantry. They display merely the ill-humour of the writer—the same Daines Barrington, the 'Welsh Judge' and *Bench*er, whose puerile eccentricities are recorded in the account of the "old benchers" in Charles Lamb's "Essays of Elia."

¹ See Co. Litt., 108 a, note 116.

² 'Testa de Neville,' *ante*, p. 26.

Tenure of
legal offices
by ser-
jeantry.

was always a tenure by Grand Serjeantry where the service or office of honour reserved, concerned the administration of justice,¹ and many instances are given of such serjeantries. One of them is constantly referred to by old writers, viz., The Ushery of the Exchequer.² This and almost all other offices in Grand Serjeantry have now become mere matter of history.

The posi-
tion or
dignity of
Serjeants-
at-law.

Leaving this subject of Serjeants by tenure, let us now recur to the Serjeants-at-law.

Meaning of
the words
Serviens ad
legem.

Designated as *Serjeants* in accordance with the feudal rules already referred to, but forming certainly a class or order altogether distinct from the ordinary serjeants by tenure, *Serjeants-at-law* seem always to have had

¹ Co. Litt. 106 a.

² The office of Ushery or Ushership of the Exchequer, with the appointment of ushers, criers and attendants at the barriers of the Court, was held as a serjeantry in gross up to 1470. See 1 Rot. Parl., 426 b. Dyer, 213 b, also refers to the following memorandum from the records of the Exchequer of Edward III., Henry IV., Henry VI., and Edward IV.:—"Shewing that Andrew Billishe of the county of Lincoln holds by hereditary right the office of Usher of the Exchequer of our Lord the King, with divers other offices thereto belonging, viz., offices of ushers and criers in C. B. Marshals, ushers and criers and barriorum in each of the Eyrea of the Chief Justices itinerant within the kingdom of England, and fivepence to be received every day in the receipt of the Exchequer of our Lord the King by Grand Serjeantry, and it is worth annually twenty marks above reprises."

The oath of the Usher of the Exchequer is one of those in the Book of Oaths. It seems doubtful whether the ushering the Exchequer was originally a serjeantry in gross. See Manning's 'Serviens ad legem,' p. 301, *et seq.* An assize was brought in 1335 for the ushery of the Common Pleas at York. *Hind v. Dagworth*, M. 7, Edw. III., fol. 57, pl. 47; H. 8., Edw. III., fol. 16, pl. 47.

The Usher (Huissier) was certainly at one time a very important personage. The Usher of the Black Rod, like the Serjeant-at-arms, is still so. The Usher of the Chancery seems formerly to have been the Receiver and Keeper of all money paid into Court till these functions were assumed by the Masters in Chancery, and at length, in 1726, transferred to the officer then appointed by the 12 Geo. I. c. 32, called the Accountant-General.

rights and obligations in the administration of the law independent of the Crown. In the words of the 'Mirror of Justices' on the subject of the order, "Counters are Serjeants skilful in the laws of the realm which serve the common people to declare and defend actions in judgment for those who have need of them for their fees."¹ The title *Serjeant Counter* or *Serjeant of the Coif*, continued in use long after the 'Mirror' was written, but the proper formal designation seems by the register of writs and other authorities to have been "Serjeants-at-law, *Servientes ad legem*."²

The admission or call to the Order of the Coif seems always to have been treated as of much importance, and to have been accompanied with much state and solemnity. The ceremonies observed on the occasion form the subject of elaborate description by writers of authority. Fortescue, Coke, Dugdale and others dwell on the solemn forms used in calling *ad statum et gradum servientis ad legem*, as each deserving our special attention—the selection by the Judges *de maturioribus* of the *jurisperiti*, their formal nomination to the Crown, their being called by writ of summons under the Great Seal *ex advisamento concilii*—the formal oath of office prescribed for the Serjeants-at-law, and the great form and ceremony used at their creation.

Admission
to the
order a
matter of
solemnity.

As far back as we have any reliable information the admission to the Order of the Coif, the call *ad statum et gradum servientis ad legem*, has been by writ of summons under the Great Seal,³ and we have Lord

Call of
Serjeants-
at-law by
writ under
Great Seal.

¹ 'Mirror of Justices,' c. 2, s. 5.

² In some cases "*Servientes inlegibus et consuetudinibus Angliæ ex parte*."—Co. Pref. to 9th Rep. xxi.

³ The writ is imperative, and cannot be disobeyed with impunity. See

Coke's authority for it that this writ is as old as the *Registrum brevium* (believed to be the most ancient book of forms known to the common law).¹ The form of the Serjeants' writ of summons given by Coke is taken from that used in the call of William de Herle, a distinguished member of the order, of the time of Edward II.² The following is a copy of his writ:

"Rex, &c. Gulielmo Herle salutem: quia de advisamento concilii nostri ordinavimus vos ad statum et gradum servientis ad legem in quindena Sancti Michaelis proxim. futur. suscipiend., vobis mandamus, firmiter injungentes quod vos ad statum et gradum prædictum ad diem illum, in formâ prædictâ suscipiend. ordinetis, et hoc subpcenâ mille librarum, teste me ipso."

Present
form of
writ.

This form is substantially the same as that in use at the present time.³

Serjeants'
writs, like
Peers'

Issued under the Great Seal by the Queen in Council, it is stamped with the highest authority, resembling in

observations of Lord Ellenborough in *Morris v. Burdett*, 2 M. L., s. 218, and cases referred to in Serj. Wynne's Tracts, p. 252.—Com. Dig. brief. a.

¹ *Registrum Brev.*, fol. 287. See Co. Litt. 159, and Preface to 10th Report, xxii., and Champney, 'History of Hertfordshire,' 6, p. 75, and Manning, 'Serj.-at-law,' p. 35.

² William de Herle was summoned as Serjeant-at-law to assist Parliament with his advice and legal services in 1310 and 1312. He was made one of the King's Serjeants in 1316 and Chief Justice of the Common Pleas in 1328, retiring, from old age, in 1337, but continuing to aid in the Privy Council.

³ The writ I received was in these words: Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to our trusty and well-beloved Alexander Pulling, of the Inner Temple, London, Esq., greeting. Forasmuch as, by the advice of our Council, we have ordained you to take upon you the state and degree of a Serjeant-at-law without delay, we strictly enjoining command you to put in order and prepare yourself to take upon you the state and degree aforesaid, in form aforesaid, and this you may in nowise omit under the pain of one thousand pounds. Witness ourselves at Westminster the ninth day of February, in the twenty-seventh year of our reign.

this respect the writ of summons used in the creation of Peers,¹ or the writs of summons of Bishops to Parliament, and a number of other cases of writs calling to high position in Church or State, including the Chief Justice of England; and Lord Coke and other great authorities² are careful to explain that the expressions used in the Serjeants' writ throughout denote dignity, rank, grade, and position. The words *de advisamento concilii nostri* are used in the writs for the creation of Peers and

writs,
issued by
Queen in
Council
under
Great Seal.

Comments
by Coke
and others
on form of
Serjeants'
writs.

¹ The right of sitting in the House of Lords was anciently confined to those specially called by the King's writ. See Lord Abergavenny's Case, 12 Co. Rep. 70. The first creation of a peer by *patent* was in 1387, when Richard II. created John Beauchamp Baron of Kidderminster by letters patent. See 12 Hou. State Trials, 1195; Co. Litt. 15 b; Com. Dig. Dignity by Writ, c. 3.

When the eldest son of a Duke, Marquis, or Earl, is called to the Upper House in his father's lifetime, he is so called by writ of summons. See, amongst other instances, case of Marquis of Tavistock (Baron Howland); Perry & Knapp, 143, S.C., Cockburn & Rowe, 95.

Before the Conquest the appointment of bishops and abbots seems always to have been by writ under the Great Seal with the advice of the *witen*. A number of examples of such writs are to be found in Freeman's 'History of the Norman Conquest,' vol. ii. p. 573. The bishops who sit in the House of Lords are always called by writ. The Chief Justice of England was also made by writ. Coke, 2nd inst. 26, 4 inst. 75. The old form of the writ is given in the book called 'The Diversity of Courts.' "Rex dilecto et fidel. suo, T. Fitz James saltem: Quia volumus quod vos sistis capital. justicia noster, placita coram nobis tenenda, vobis mandamus quod officio illi intenditis."

The rest of the Judges have generally been made by patent, their tenure being up to Wm. III. "*habend. et occupant officium quamdiu nobis placuerit*," after that time being "*quamdiu se bene gesserit*."

In the Close Rolls, 14 Hen. III. m. 8, is the enrolment of a writ constituting Ralph de Norrich (a clerk in orders who had been employed by the King in Ireland, and otherwise in various ways), Justiciariis de Banco, "*et eum aliis Justiciariis de Banco socium exhibuit, et mandatum est justiciariis de Banco quod ipsum ad hoc socium admittant*;" and Serjeant Manning in his notes to the "Serjeants' Case" gives from the Close Rolls of Henry III. another instance of a puisne judge appointed by writ, but the two appointments he refers to in the next reign are by patent. See Manning's 'Serv. ad leg,' p. 282, No. lxi.

² See especially Coke's Address to the New Serjeants, and Whitelock's Address to the New Serjeants in 1648.

Various provisions as to the creation, position, and dignity of Serjeants-at-law.

Serjeants-at-law, and in the ordinary summons to Parliament of the Lords Spiritual and Temporal, and the extraordinary summons of the Judges and Queen's Serjeants when Parliament requires their services.¹ The same distinction is observed in all these writs in using the *vos* and *vobis* instead of the second person singular, as in writs addressed to ordinary or official persons,² and the call by the writ is *ad statum et gradum servientis ad legem*, which words we are assured by unquestionable authority certainly denote something more than a mere degree.³ *Gradus* in the language of our law is often used to denote dignity and pre-eminence: and the word⁴ *degradation* the loss of such rank, etc.

Selden explains the words *status et gradus* in the Serjeants' writ as meaning an "ancient state and degree," or title, state, and dignity;⁵ and such explanations quite

¹ See Whitelock, *ut sup.*, and 'Memoirs,' 356.

² This distinction in old times was deemed of much importance. Both in this country and in France the *vos* or *vous* instead of the *tu* and *te*, and *thou* and *thee*, always marked social rank, especially in writs and other official proceedings. Even in the writs directed officially to the sheriff the second person singular only was used—*venire facias*, *feri facias*, *capias ad resp.*, etc.; and it was on one occasion solemnly decided that such writs addressed in the second person plural were bad. Year-book, 29 Edw. III. fol. 44.

³ Chief Justice Fortescue observes, that "there never were degrees of Bachelor or Doctor conferred in the Inns of Court, as in the civil and canon law by the universities; but there is there conferred a degree, or rather an honorary estate, no less celebrated and solemn, called the Degree of a Serjeant-at-law." See De Laud. Leg. Ang. c. 50, quoting Whitl. M. 347. Lord Coke's expression is "Serjeant-at-law of the Degree of the Coif," Coke's 4th Inst. 75, 100.

⁴ See Stat. 13 Car. II. c. 16, and Year-book, 18 Edw. II.

⁵ See Selden's notes to Fortescue, c. 50, and Lord-Keeper Coventry's speech at the creation of Serjeants, in Whit. M. 397. The mistake referred to by Selden has often been made; and even the Judicature Act, framed with the express object of altering our old common and statute law which required the Judges to be selected from the Order of the Coif, dispenses with the *degree* of Serjeant-at-law.

accord with the provisions of various old statutes which describe the grade of Serjeants-at-law, one of which speaks of the newly-called member of the Coif taking upon him the *state* of Serjeant,¹ and another uses the expression, *al creation des Serjeants del ley*, etc.²

From time immemorial the Serjeants-at-law have taken an oath of office in conformity with the obligations of the order and the rules of the common law, so as to make each member of the order, in the terms of the law, *Serjeant le Roi jurrée*.³ This old oath of office was always very different from the ordinary promissory oaths of fealty, fidelity, allegiance and supremacy, which have from time to time been prescribed for persons taking office as a test of loyalty and good citizenship.⁴ The old oath of office was the special security prescribed by our common law for the due performance of the duties legally devolving on the officials sworn. The terms of the oath necessarily varied with the duties prescribed, the one becoming a test of the other. From the coronation oath down to the oath of the petty constable, the form prescribed by our law was always designed to comprehend the chief duties of the office.

Oath of office of the Serjeant-at-law and its legal effect.

The oaths of the Chancellor, the Judge, the Sheriff, the King's Privy Councillor, were from old time always in such a form as to bind each official faithfully to

¹ 8 Hen. VI. c. 10. See, as to this, *post*.

² 8 Edw. IV. c. 2. Coke observes on this that *creation* is ever applied to *dignity*.—Preface to 10 Co. Rep. xxiii.

³ This term legally included every Serjeant-at-law. See 14 Edw. III. c. 16, and *post*, ch. iii.

⁴ See 1 Jac. I. c. 60, 14; 1 Geo. I. stat. 2, c. 13; 6 Geo. III. c. 53, s. 2. These promissory oaths are directed to be taken within a prescribed period from the time of election or entering on the duties of office. See 10 Geo. IV. c. 7. But the *oath of office* must always be taken *before entering on duty*. The Judges, Serjeants, or others for whom an oath of office is prescribed have no legal power until they are sworn in.

perform his duty. The oath of these high officers bound them well and truly to *serve the king*; the oath of the Judges, the King's Serjeants, and some others, e.g. the Master of the Rolls, faithfully to serve the *King and his people*,¹ whilst the oath of the ordinary Brother of the Coif bound him to serve the *King's people* as one of his Serjeants-at-law.

Solemnities observed on a call to the Coif.

The call to the Coif, or *creation*² of Serjeants-at-law was in the time of our forefathers a matter of very great solemnity. We have referred to the Serjeants' writ and oath of office, we shall have hereafter to enter more minutely on the various other forms and ceremonies observed on such occasions—the selection by the Judges “*de Maturioribus*” of the learned apprentices of the law,³ for presentation to the Queen, of the ceremony of their call by the Lord Chancellor,⁴ of the grand procession to St. Paul's⁵ and to Westminster,⁶ the presentation of gold rings,⁷ the formal and elaborate addresses by way of congratulation,⁸ the quaint ordeal of *counting* by way of probation,⁹ the ceremony of ringing out observed at the Inn of Court to which the newly-created Serjeant before belonged,¹⁰ the prescribed rules as to robes and other costume,¹¹ and last, though not least, in days gone by, the grand sumptuous feasts given by the newly-created Serjeants, as Fortescue observes, *like that at a coronation*.¹² It must suffice here to say that these ancient observances have from age to age¹³ greatly

¹ See 14 Edw. III. c. 16; 18 Edw. III. 14; and see Book of Oaths, p. 6.

² See *ante*, p. 34, and *post*, p. 37.

³ See *post*, ch. vi.

⁴ See *post*, ch. vii.

⁵ See *post*, p. 70 and ch. vii.

⁶ See *post*, ch. vii.

⁷ See *post*, ch. vii.

⁸ See *post*, ch. vii.

⁹ See *post*, ch. vii.

¹⁰ See *post*, ch. v.

¹¹ See *post*, ch. vii. and *ante*, p. 8.

¹² See Fort. De Laud. c. 50, p. 114.

¹³ As to the solemnities in old times observed at the creation of an Earl, see Stow's Annals, p. 121.

varied, and seem now for the most part to have long gone out of fashion.

The call to the Coif thus made with so much form and ceremony has ever been treated as deserving of the solemnity observed. The position, *status et gradus servientis ad legem*, is legally not merely official, but a dignity,¹ carrying with it not only rights, duties, powers and obligations in the administration of the law, but social rank and distinction. Of what the ancient and modern duties legally devolving on the Serjeants-at-law consist, we shall have occasion to consider in another place;² what their rank and position is we need hardly cite authorities to show.

Status et gradus of Serjeants-at-law.

The title of the Serjeants-at-law to general and social rank is entirely free from doubt. In the social ladder the rank of Serjeant-at-law comes immediately after that of Knight Bachelor, and not only above esquires of any degree, but above Companions of the Bath, and a number of persons of noble birth³ or official status; and not only is this the case, but the precedence of the wife of a Serjeant-at-law is duly recognised, like that of wives of Baronets or Knights.⁴ In former times questions as to

General and social rank of Serjeant-at-law.

¹ Com. Dig. Ley, 1 Edw. VI. c. 7, s. 3.

² See *post*, ch. ii.

³ See on this Table of Precedence in the Peerages of *Burke* and *Debrett*, where the order of precedence from the Sovereign to the lowest rank of gentleman is given—the Duke, Archbishop, Marquis, Earl, Viscount, Baron, Bishop, Knight, Justice of either Bench or Serjeant-at-law, being classified in 1 Edw. VI. c. 7, s. 3, with grades declared by express statute or settled by law to be next in rank to Serjeants, e.g. Masters in Chancery and Masters in Lunacy, 8 & 9 Vict. c. 100; Companions of the Bath, eldest sons of the younger sons of Peers, *eldest sons of Baronets*, or of Knights of the Garter or St. Patrick, Knights Bannerets, etc., etc. All of these certainly appear to have, outside the High Courts of Justice, rank and precedence before *all Esquires*, even having patents as Queen's Counsel, etc.

⁴ In these Tables the Precedence of wives of Serjeants-at-law accords with that of their husbands, e.g. they take precedence of the wives of

precedence seem to have arisen between the Knights Bachelors and the Serjeants-at-law; but the rule as now settled seems to be observed by those who act on the rule *detur digniori*. To use the words of Chief Justice Brooke. "*Serviens ad legem* is character *indebilis*, which no mere addition of office, dignity, or honour destroys."¹

Permanent
position
conferred.

The ordinary rule as to official promotion is different. The acceptance of any office from the Crown generally vacates that previously held; and it seems pretty clear that the acceptance of a judgeship by H. M.'s Attorney-General, Solicitor-General, or other of H. M.'s Counsel vacates the former appointment, but a Serjeant-at-law appointed one of the Queen's Counsel² or a Judge remains still a member of the old Order of the Coif, and his rights, duties, and powers as a Serjeant-at-law continue after such official appointment ceases. There are remarkable instances of the operation of this rule with regard to the Coif. Sir Matthew Hale, who took the Coif in 1653, practised as Serjeant-at-law for many years. He was made a Judge during the Commonwealth, but soon retired³ from the Bench, and went back to Westminster Hall to practise as *Serjeant Hale*, and sat in Parliament under that designation till his return to the Bench after the Restoration.⁴

Legal
operation
of this case.

Sir
Matthew
Hale.

all Esquires, and also of the wife of a Companion of the Bath, of the grand-daughters of a Peer, or the daughters of a Baronet, or even the wife of the eldest son of a Knight of the Garter.

¹ Brooke, Abr. tit. Nosme, 5 (e); a Knight continues so though created a Peer. See *Norris v. Somerset*, 35 Hen. VI. fol. 55.

² i.e. Queen's Serjeant.

³ He was M.P. for Gloucestershire, and afterwards for Oxford as 'Serjeant Hale.' See Com. Journals *passim*.

⁴ Called to the Coif in 1653 his name occurs as Serjeant Hale in the reports for some years after, e.g. in Styles, Rep. 49. Hardres, Rep. 16. On the Restoration writs were issued again, calling to the coif Hale,

Sir George Hutchins, whose writ as Serjeant-at-law was dated 1686, and his patent as King's Serjeant 1689, was next year appointed one of the Commissioners of the Great Seal; and on being discharged from that high official position, set up his claim still to be King's Serjeant: but it was held in accordance with several authorities that Sir George Hutchins' acceptance of office extinguished¹ his place of *King's Serjeant* though he still remained *Serjeant-at-law*. Sir George Hutchins.

On a recent occasion, in consequence of the insufficient number of the Judges for the circuits, it was desired to find a fit person to act as Special Commissioner on the Northern circuit. The selection was made of Sir John Mellor, who, having been made a Queen's Counsel in 1851, and a Serjeant-at-law and Judge in 1861, had retired from the Bench in 1881. Sir John Mellor was duly appointed, the only qualification he still retained for the purpose being that of a *Serjeant-at-law*.

Up to a very few years ago the Coif had been an indispensable qualification for those who had to administer justice under the Circuit Commissions. The positive regulations on this subject are laid down by the statute of Edward III., but the principles that govern them are of a much earlier date. Rules as to Circuit Commissions.

The regular Judges of the land have for more than six hundred years always been Serjeants-at-law.² We Rules as to Judges being

Maynard, and several others who had been Serjeants in the time of the Commonwealth. See 1 Siderfin, Rep. 3, Dug. Chron, Series, 113.

¹ Sir George Hutchins' case, 5 Levinz, 351. The office of King's Serjeant was afterwards restored to him by patent in 1693.

² No one, be he ever so well read and practised in the law, can be made a Judge in the Courts of King's Bench or the Common Pleas, which are the superior ordinary Courts of the kingdom, unless he be first called to be a *Serjeant-at-law*.—Fort. De Laud. c. 1, p. 116.

chosen
from the
Serjeants.

have the authority of Coke for it that such was the rule of the Common Law,¹ and it is certain that it was in old times always deemed an abuse of the power of the Crown to appoint other than Serjeants-at-law to be Judges.

Evasion of
this rule.

We shall see how, under the Norman rule, the judicial office was continually conferred on men of influence and power in church and state, without a legal training,² and how constant were the complaints, received up to the thirteenth century, of the judicial office being intrusted to such men, and how often, during the time just referred to, the promise was extorted from the Crown to make Judges always of such as were conversant with the law. There seem to have been generally on the Bench with the untutored Grandees trained lawyers known as *Pallatii Causidici*,³ and at last the law made it imperative that the Judges of the land, both at Westminster Hall and on circuit, should be men learned in the law, and prohibited the assizes being taken except before *Justice del un Bank ou del autre ou Serjeant le Roy jurree*.⁴

Gradual
innovation.

For ages, in the event of a vacancy among the Judges, the practice was rigidly adhered to of the King in Council appointing the new Judge from the practising Serjeants-at-law. It was only by a course of gradual innovation that this rule was departed from, and the

¹ See Coke's 4 Inst. 75, 100; Preface to 10 Co. Rep. 24; 2 Rot. Parl. 331 b.

² See preamble to 14 Edw. III. c. 16.

³ See Selden's note to Fortescue, De Laud. c. 51.

⁴ 13 Edw. I. c. 3; 14 Edw. III. c. 16. See Fort. lib. i. p. 117, etc. "When any of the Judges dies, resigns, or is superseded, the King, with the advice of his Council, makes choice of one of the Serjesnts-at-law, whom he constitutes a Judge by his letters patent in the room of the Judge so deceased, resigning, or superseded."

provisions of the old law evaded; the King's Ministers selecting Judges from others than those belonging to the Order of the Coif, the selected Judge being first called by writ *ad statum et gradum servientis ad legem* and soon afterwards appointed to the judgeship by letters patent describing him as *Servientem ad legem*.¹

It would seem as if the departure from the old rule of our constitution was for a long time considered by the Courts at Westminster as one to be very strictly watched, any irregularity in the writ making it illegal.²

Such innovation had also to be propped up by a variety of special Acts of Parliament. Thus an act was required to enable the selected Judges to go through the formality of being called to the Coif in vacation;³ another special Act of Parliament to authorise the names of Queen's Counsel, as well as those of Serjeants-at-law, to be inserted in the commissions of assize,⁴ and now without any public advantage, with small gain to the Bench or the Bar, and certainly with no prayer for the change from any one, or any argument adduced for the innovation, the old safeguard provided by our law against abuse in the appointment of Judges has been swept away by a short clause in one of the new Judicature Acts.⁵

From the general body of the Serjeants-at-law there were, until a very few years ago, always appointed

Appoint-
ment of
King's
Serjeants.

¹ See *post*, ch. vii.

² See Sir Harbottle Grimston's introd. to Cro. Car. p. 7. Sir W. Jones, Rep. 63, where it is reported that objections as to the date of the return, etc., were upheld.

³ 59 Geo. III. c. 113.

⁴ 13 & 14 Vict. c. 25.

⁵ "No person appointed a Judge of either of the said Courts shall henceforth be required to take or to have taken the *degree* of Serjeant-at-law."—36 & 37 Vict. c. 66, s. 88.

a certain number as counsel to the Crown, who acted, like the Attorney-General, not only as the legal adviser, or Counsel of the Sovereign, but as the Crown advocates, or public prosecutors, their designation being King's Serjeants, *Servientes Regis ad legem*, or Narratores Regis.¹ A passage in Spelman is sometimes referred to as showing that there was one of these in every county.² It may possibly admit of doubt whether this was really so; but it would seem clear from the old form of proclamation at the assizes, that in every county the King's Serjeant had at least all the power which the Attorney-General now has.

Serjeants-at-law in counties palatine.

It is worthy of note that in every one of the counties palatine there has always been a high law officer called the Queen's Serjeant,³ and in the form of proclamation still in general use, on an arraignment of prisoners, the Queen's Serjeant is spoken of as the chief public prosecutor.⁴

¹ Braeton, 157 b. The old records and forms always call the King's Serjeants *Servientes Domini Regis ad legem*. See Manning's *Serviens ad legem*, app. 260.

² See Gloss. voc. *Serviens ad legem*.

³ In the County Palatine of Lancaster the head of the Bar is the *Queen's Attorney* and Serjeant, usually called Attorney-General. In the Duchy Court of Lancaster the office is that of Queen's Serjeant. In Chester the Serjeants-at-law were appointed by letters patent, with an allowance of two marks with robes—afterwards of five marks. See *Rolls of Parl.* vol. i. 392 b; vi. p. 364 a, 366 a, 378 a.

⁴ "If any one can inform my Lords the Queen's Justices, the Queen's Attorney-General, or the Queen's Serjeant, of any treasons, murders, felonies or misdemeanour done or committed by the prisoners at the Bar, let him come forth and he shall be heard, for the prisoners now stand upon their deliverance."—5 Edw. III. c. 13.

The Attorney-General was formerly always named *after the King's Serjeant*. The Order in Council of 1814, as we shall see, gave the precedence to the Attorney-General.

The name of the King's Serjeant was always mentioned before the Attorney-General.—5 Edw. III. c. 13; and see Proclamation on a traverse

In every court of oyer and terminer and gaol delivery the King's Serjeant had at least the full power which now belongs to the Attorney-General; and in civil proceedings affecting the Crown the King's Serjeant seems to have had a similar position and power.

taken to an inquisition requiring information to be given to the King's Serjeants.—Rastell, ent. Enquest, 268 a, Year Book, M. 16, H. 7 Rot. 5. See also the proceedings in outlawry, *Quare impedit*, Rastell's entries, 302; and on a petition of right in Parliament, 1 Rot. Parl. 332 b, 345 b, 346 b; 2 Rot. Parl. 438 b.

The following form was used in making the present Sir John Byles Queen's Serjeant in 1857:—

VICTORIA BY THE GRACE OF GOD

of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith *To all to whom* these presents shall come *Greeting Know Ye* that We of our especial grace certain knowledge and our mere motion have constituted our trusty and well-beloved John Barnard Byles Serjeant at law to be one of our Serjeants at Law during our pleasure *We Will* also and by these presents grant to the said John Barnard Byles that he may and shall have these our letters patent duly made and sealed under the great seal of our United Kingdom of Great Britain and Ireland without fine or fee, great or small, to be for the same in any manner rendered done or paid to us in our hanaper or elsewhere to our use although express mention of the certainty of the premises in these presents is not made or any other thing cause or matter whatever to the contrary notwithstanding *In Witness* whereof we have caused these our letters to be made patent *Witness* Ourself at Westminster the twenty-seventh day of February in the twentieth year of our reign.

By the Queen Herself.

C. ROMILLY.

The following is the form of the summons of the Queen's Serjeants to Parliament:—

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith *To our trusty and well-beloved John Barnard Byles* one of our Serjeants at Law *Greeting* Whereas our parliament for certain arduous and urgent affairs concerning Us the State and defence of our said United Kingdom and the Church is now met at our City of Westminster and there with the Prelates Nobles and Peers of our said United Kingdom to confer and treat *We strictly enjoining* command you that all other things laid aside you be personally present at our said parliament with Us and with others of our Council to treat of the aforesaid affairs and to give your advice and this you may in no wise omit *Witness* Ourself at Westminster the twenty-seventh day of February in the twentieth year of our Reign.

C. ROMILLY.

Appoint-
ment by
patent.

The appointment of King's Serjeants has always been by *patent*, the oath of office being "well and truly to serve the *King and his people*, as one of his Serjeants-at-law." The number of King's Serjeants has varied at different times, and to secure due seniority it was the custom by special patent to appoint one as the King's *premier Serjeant*, whilst another was called the *King's Ancient Serjeant*.

Serjeants-
at-law in
free
cities.

City of
Norwich.

Whatever may be said as to the appointment of *Servientes Regis ad Legem* for every county,¹ there appears to have been occasionally a *municipal* officer resembling the King's Serjeant. Thus in the city of Norwich the King's Serjeant-at-law is said to have been the chief law officer of the Crown presiding in the Courts there² until 1152, when the citizens obtained a charter to choose law officers of their own. In many of the ancient free cities of Europe there seems to have been an old officer called the *Defensor*,³ whose duty it was to protect the general interests of the community and to prosecute all those who offended; and it is not improbable that the office of Common Serjeant was based on this old institution. This ancient officer is quite distinct from the Order of the Coif and the Queen's Serjeants-at-law chosen from that order, but in accord-

Instances
of Ser-
jeants-at-

¹ See Wynne, 235.

² Bracton, 157 b, and *ante*, p. 42. See Spelman, Gloss. Serjeant. Serjeant Wynne's Tracts, Serjeant-at-law, p. 235. By a charter in 1201, King John granted to William de Braiosa, that no sheriff or Serjeant of the King should enter into any lands of him or his heirs pertaining to the honour of Braiosa, to do any part of his office there, but that William de Braiosa's own Serjeant should summon the pless of the Crown. Madon, 103, 150; Wynne, 238. William de Braiosa had held under Henry II. and John many various offices in England and Ireland. See Lord Lyttelton's Hen. II. 111-339.

³ This seems to have been the case in many of the free cities of France. See Guizot's 'Civilization in France,' lect. 2, p. 297.

ance with and to some extent in imitation of the older institution, there have been from an early period Serjeants-at-law specially appointed not only for the counties palatine, but for the cities of London and Norwich ; and the office of Common Serjeant is referred to very far back in the City Records under the name of Common Counter, or Communis Serviens ad Legem, like the Communis Defensor in free cities ; and although the designation may have been altered, the office has probably come down from a very distant age.

law not of
the Coif.

The Common Serjeant of the City of London seems for many years to have stood in the same relation to that community as the King's Serjeant in old times did towards the Crown. The Common Serjeant is mentioned in the civic records as early certainly as the beginning of the fourteenth century, being designated at various times as the Common Counter, Common Serjeant-at-law, Communis Serviens ad Legem, Communis Narrator, Communitatis Narrator, etc.¹ It was provided by articles contained in a charter granted by Edward II. to the City in 1319,² that this officer should be chosen by the commonalty, and by old usage the appointment rested with the Court of Common Council, under certain restrictions as to those who were eligible.³

Common
Serjeant of
City of
London.

¹ See Liber Albus, lib. 1, part 1 ; lib. 3, part 2 ; fol. 42 and 269 of Mr. Riley's edition.

² Rot. Parl. 12 Edw. II. p. 2, m. 2, set forth in Stow's London, lib. 5, p. 363.

³ The custom at Guildhall was for the senior of the *Common Pleaders*, in the Mayor's Court, to be elected Common Serjeant. In 1824, however, the then senior Common Pleader, Mr. Bolland (afterwards Mr. Baron Bolland) was passed over, and the late Lord Denman was chosen, he having been one of the counsel for Queen Caroline at her trial, and believed to be unfairly shut out from promotion as long as George IV. was on the throne. This event gave rise to much discussion, the Common Council being proud of their Common Serjeant. Lord Lyndhurst, then Serjeant

Position of
Common
Serjeant.

In all the ancient City Courts and assemblies the Common Serjeant seems to have been called on to act less in a judicial capacity, than as advocate or representative of the whole civic community; speaking on behalf of the commonalty in the Common Hall and in the Courts of Law; prosecuting at one time ¹ *pro domino rege et civitate* for various offences, at another for the protection of the City orphans.²

Like the King's Serjeant in old times, or the Attorney-General subsequently, the Common Serjeant of the City proceeded when occasion required by information *ex-officio*.³ By the Central Criminal Court Act and other statutes relating to London, a variety of judicial duties have been imposed on the officer we are speaking of, and for some years his judicial duties seem to have absorbed the greater part of his official time and attention; but in old times the City Common Serjeant was often a lawyer of good position in Westminster Hall. By the order of precedence adopted there, he was junior to members of

Copley, who was engaged at the Queen's trial as counsel for the Crown, being made Solicitor-General and soon after Attorney-General, one of the caricatures of the day, entitled "The dashing white Serjeant," represented Denman complaining that he was only a *Common Serjeant* whilst Copley was made A General.

¹ "Rd. de Edenor sive scrivenor attach. fuit ad respond. tam Domino Regi quam Johanni de Wentbrigge Communi Servienti civ. Lond. qui pro Dom. Rege et civitate sequitur de div. falsif." etc.—City Letter Book, g. fol. 189, 41 Edw. III.

² "Johannes Weston *communis narrator* Civ. Lond., ad cujus officium de ratione pro parte Orphanorum dictæ civitatis, bona sibi qualiter cunque pertinentia prosecui monstravit."—Thomæ Fauconer, Majori, etc. Letter Book 1 fol. 17, 26 Hen. IV.

³ In a volume published in 1782 by the Liverymen of London is contained a report of the proceedings in the Court of St. Martin's le Grand on appeal from the Mayor's Court on an information in 1776 by the Common Serjeant of the City against the Warden of the Goldsmiths' Company for disobeying the precept of the Lord Mayor to summon the Livery to a meeting at the Common Hall.

the Order of the Coif, but had precedence of ordinary barristers.

Within the counties palatine the Serjeants-at-law seem by special concession to have had the same position, power, and authority as King's Serjeants. In Chester this continued until 1543, and in Durham until a later time; and in the County Palatine of Lancaster the appointment is still made of the *Queen's Attorney and Serjeant*, whilst in the Duchy of Lancaster there are separate appointments of Queen's Serjeants and Queen's Counsel.

Appoint-
ments in
counties
palatine.

In Ireland there were Serjeants-at-law certainly as early as the thirteenth century: for the ordinance of 1302,¹ *pro Statu Hiberniæ*, speaks of the *servientes in curiis nostris ibidem placitantes* as if of old standing: and from the entry in the patent Roll it would seem there was appointed² a chief or King's Serjeant for every county. A petition to Parliament in 1320 seems further to show that the selection of Judges was obliged to be from that class;³ and in an Act of Parliament in 1413 the Irish Serjeants and apprentices at law as a class are specially referred to.⁴

Serjeants-
at-law in
Ireland.

The Serjeants-at-law in Ireland are at this day appointed by letters patent; they have precedence over all the Bar except the Attorney and Solicitor-General.⁵

¹ 31 Edw. I. c. 4.

² Rex concessit Thom. Chambre Rot. Parl. 236, (among other offices in the county of Cork) officium Capitalis Serj. See Rot. Pat. Hib. 236.

³ See petition in 1 Rot. Parl. 386, complaining of appointment of Judges of the Common Pleas in Ireland who were not *men of law*: and answer that the treasurer of Ireland should see proper and sufficient Justices appointed.

⁴ 14 Rot. Parl. 13, Act for banishing Irishmen from England, except, amongst others, *Serjeants and apprentices at law*.

⁵ In the calendar of the Irish Patent Rolls in 1551 there is the appointment of John Bath of Athearn to the office of Serjeant-at-law, *vice* Palsner

The Serjeants-at-law in Ireland are deemed to hold an office under the Crown, but in the letters patent, the person appointed is called merely *Serjeant-at-law*.

Thus far it has been deemed right to go by way of *introduction* to the subject before us. This subject must now be fully dealt with, in the order most convenient for the purpose of embracing all that legitimately belongs to it. The great space of time—more than eight hundred years—through which the annals of the Coif extend, necessitates our entering on a very large range of matter pertinent to the subject.

There is so much in the “Order of the Coif” to interest Englishmen, that no mere *law book* or dry history of the order, or biographical account of its distinguished members would suffice to do it justice.

Arrange-
ment of the
subject.

It has, after full consideration, been deemed best not to follow a strict *chronological course*; and the reader will find that, after the early history of law and lawyers in this country has been entered on, there are separate chapters specially devoted to subjects near akin to, if not directly forming part of, the history of the old Order of the Coif—the *Aula Regis* and Westminster Hall, and the early position of the Serjeants-at-law there—the King’s Court of Common Pleas, Justices, the Circuits, and the administration of the law of *real property* (with which the Serjeants-at-law were for so many ages specially identified); the *apprenticii ad legem*, and the Attorneys and Solicitors; the *hostels*, or Inns of

Barnewall, to hold for life.—4 Edw. VI. memb. 25, and then memb. 26; and the appointment of Serjeant Bath to office of Sol. General, to hold during pleasure—*ib.* Appoint. of Edw. Loft to office of Serjeant-at-law during pleasure in as ample a manner as Bath and Barnewall held the same.—Irish Pat. 466.

Court and Chancery ; and the *Benchers*, *Readers*, and *Ancients*, Utter Barristers and Inner Barristers, etc. ; the appointment of *King's Counsel extraordinary*, the old and modern rules of *precedence* and *preaudience*, and professional etiquette ; the course of selecting Judges, and those to be included in judicial commissions ; the ceremonies, feasts, *revels* and moots of the Inns of Court ; the solemnities and observances at St. Paul's and at Westminster on the creation of Serjeants-at-law, etc., the costume of the order, and of the Bench and the Bar ; on the more distinguished members of the Order of the Coif, and the noble families descended from them ; the gradual innovations on the salutary provisions of our old Common Law, and the various attempts, as yet unsuccessful, for some object neither yet made intelligible, or shewn to be justifiable, reasonable, or expedient, to terminate the existence of the Order of the Coif.

CHAPTER I.

THE LAW AND THE LAWYERS BEFORE THE TIME OF
EDWARD I.

THE reign of Edward I.—the last quarter of the thirteenth century—is the period during which, as we are emphatically told by Sir Matthew Hale, the actual work of forming the law of England was effected. Until the accession to the throne of this enlightened Sovereign, our ENGLISH JUSTINIAN,¹ the records of law and lawyers in this country are few and indistinct. Memorable as were the events in English history associated with the growth of our laws and constitution, from the days of Alfred to the date of Magna Charta, we have little real information as to the actual *course of the law* the proceedings of the Courts, and Judges, and the position of the professional lawyers.

Scanty
records of
lawyers
under the
Anglo-
Saxons.

The early history of the legal profession here is necessarily meagre. Indeed it may admit of reasonable doubt whether we have much valuable information as to

¹ "We come now to the time of Edward I., who is well styled our *English Justinian*, for in his time the law, quasi per saltum, obtained a very great perfection. . . . The laws did never in any one age receive so great and sudden an advancement; nay, I think I may safely say, all the ages since his time have not done so much in reference to the orderly settling and establishing of the distributive justice of this kingdom as he did within a short compass of the thirty-five years of his reign, and especially about the first thirteen years thereof."—Hale's 'History of the Common Law of England,' p. 152 of Serjeant Runnington's edition.

the actual state of the old law of England before the Conquest. In Coke,¹ Lambard,² and Dugdale,³ we find the laws of Ethelbert and Ina, Alfred and Edward the Confessor, spoken of as if they existed in the form of authentic codes, but a very learned and polished writer has thrown great doubt on all this. He observes :

“ Our English lawyers, prone to magnify the antiquity like the other merits of their system, are apt to carry up the date of the Common Law, till, like the pedigree of an illustrious family, it loses itself in the obscurity of ancient time. Even Sir Matthew Hale does not hesitate to say that the origin of our Common Law is as undiscoverable as that of the Nile. But though some features of the Common Law may be distinguishable in Saxon times, while our limited knowledge prevents us from assigning many of its peculiarities to any determinable period, yet the general character and most essential parts of the system were of much later growth. The laws of the Anglo-Saxon kings are as different from those collected by Glanvill as the laws of different nations.”⁴

Hallam's
remarks.

Thus rejected as evidence, the compilations of what we have been accustomed to treat as the Anglo-Saxon laws serve no useful purpose in explaining what was really the state of lawyers here in the Anglo-Saxon times ; and Hallam seems to think that the several compilations to which we have already referred as the Codes of Ina and of Alfred and Edward the Confessor, are none of them much antecedent to the date of 1180, when Glanvill wrote.⁵

Unauthentic
compilations.

¹ 10 Rep. procem.

² ‘ De priscis Anglorum legibus,’ 126 b.

³ Orig. Jur. p. 5.

⁴ Hallam, ‘ Constitutional History of England,’ chap. viii. part ii. p. 546.

⁵ *Ibid.* p. 547 ; see also Madox, Exch. p. 122.

The old laws do not refer to legal practitioners.

Neither in these nor any other collection of Anglo-Saxon laws is there any special reference to professional lawyers, or to the legal qualifications or positive duties or obligations of the Judge, the Pleader, or *Counsellor*.

The times of our Anglo-Saxon forefathers were not fruitful in materials for the history of the legal profession. The inartificial institutions, and simple forms then in use offered small encouragement to professional lawyers, who were in most cases hardly needed. Rules and maxims, strictly adhered to in those days, as a part of our Common Law, operated in a variety of ways to restrict litigation.

Legal maxims in restraint of litigation.

To use Lord Coke's words "by the policy of the Common Law *cum lites potius restringendæ sunt quam laxandæ*, both plaintiff and defendant, demandant and tenant, in all actions, real, personal, and mixed, did appear in person."¹

Appearance in person indispensable.

The law in those times really looked to every one, in his own proper station, to perform, in person, the various duties of citizenship. Whether in the capacity of an actual litigant, or in discharge of the ordinary duties of a suitor, (owing *suit and service* to the Court,) personal attendance was indispensable. The litigant could resort to and retain the *man of law*, who might lawfully *stand by*² him as his counsellor, but vicarious authority was not legally recognised. Attorneys and solicitors were not known, and all the forms of law, all the responsibilities of the litigation devolved on the suitor *in propria personâ*.

Laws in discouragement of litigation.

To promote or to aid legal controversies was altogether against the provisions of our old common law, which, under the names of *barratry*, *maintenance*, and

¹ Co. Litt. 429.

² See *post*, p. 73.

champerty, treated almost every kind of such meddling or interference as an offence. The first in the list of these offences consisted in the stirring up suits and quarrels between the King's subjects;¹ the second, in officiously intermeddling in any suit without sufficient warrant or justification, or aiding or maintaining the litigants by money or services or otherwise;² and the third, that of sharing in the subject-matter of the suit.³ The field of litigation was thus narrow enough, and lawsuits were almost unknown.

Offences of barratry, maintenance, and champerty.

Real Actions—those relating to land—were of rare occurrence, for property in land was rarely bought or sold, and personal property consisted chiefly of farming stock and crops, and the field of litigation was again narrowed by the operation of the old rule of the common law, against personal rights of action surviving the original owner, and against the assignment of any right or claim which could be deemed a *chose in action*.

Limitation of personal actions.

The maxim *actio personalis moritur cum persona*.

Law as to *chose in action*.

Taking all this into account we may well believe that the amount of work entrusted to the lawyers here before the Conquest was inevitably small. From the little we really know of the Anglo-Saxon Tribunals, we may be sure that the course of proceeding was of the most simple form. The Shiremute, Hustings,⁴ or County Court, where the most important lawsuits were disposed

Small scope for legal practitioners.

¹ See Serjeant Hawkins' 'Pleas of the Crown,' 243.

² See Com. Dig. Maintenance A 5.

³ *Compum partire*, to share in the land in controversy.

⁴ The ordinary judicial title of the ruler of the shire under the Anglo-Saxons was Earl or Alderman; in after times *Comte* or *Comes*, his assistant or substitute being the *Shire-reeve*, Viscount or Vicecomes. The military title of the ruler of the shire seems to have been *Heretoch*, Hertzog, Duc, or Dux. The use of the expression Viscount, as applied to the sheriff, was discontinued in the fifteenth century, when Edward IV. conferred a new hereditary title of nobility in the case of *Viscount Beaumont*.

of, hardly required, in ordinary cases, the presence of trained lawyers. Usually presided over by the Bishop and the Earl, Alderman or Count, or his Deputy, the *Vice comes*, *Viscount* or *Shire-Reeve*,¹ the Tribunal was generally relieved from difficult questions of law, and offered small encouragement to lawyers.

Proceed-
ings in an
Anglo-
Saxon
County
Court.

We may take as a sample of the proceedings in the Anglo-Saxon Courts, without the presence of professional lawyers, the following case, in the time of Canute, in the County Court of Hereford, at which presided the Bishop and the Earl; there being present, Edwin, the son of the Earl, with two other persons of position, Thurcilus Albus and Tofigius Comptus, with the *Vice comes*, and all the *liberi homines* of the county.

The cause seems to have been between *Edwin* and his mother *Enneawne* concerning a parcel of land. The case being stated, and Thursigus appearing for *Enneawne*, the Court commissioned three of the Thanes present, Leofwen, Olgelsigus and Thursigus, from the village where *Enneawne* lived, to wait on her, and learn from her own mouth what right she had to the lands that were claimed by the son;² upon their applying to *Enneawne*, she declared, with many expressions of anger towards her son, that he had no right whatever to the lands he claimed, and added that it was her intention to leave, at her death, all her lands, gold, garments, and whatever she had, to her kinswoman, who was sitting by her side, [*Leofleda*, the wife of *Thurcilus*,] and to disinherit her son.

At the same time she begged them to carry back this message to the Court, and to beg all the Thanes there present to be witnesses to this her donation.

¹ See note 4, *ante*, p. 53.

² See Hicks' *Thesaurus*, Appendix, Diss. 3.

On their return to the Court, the Thaness communicated the result of their inquiries, when Thurcilus arose, and prayed the Court to adjudge these lands to his wife, Leofleda, according to the intention of Enneawne the donor.

All who were present did as Thurcilus desired; upon which he mounted his horse, and, riding to the monastery of St. Æthelbert, he caused the judgment to be enrolled in the "Book of the Gospels."

Dr. Hicks supplies us with the report of a case¹ in the reign of Ethelred, where the proceedings are by way of appeal from the County Court to the King's Court, in a suit respecting certain land at places then called Haceburn and Bradenfield; and, on the hearing of the appeal, Wynfleda, the appellant, proved by her *witnesses* the Archbishop, the Bishop, and Alderman who had presided at the County Court, and others, that Ælfrie the Alderman sold to the appellant Wynfleda the land in question. The king then sent them to the Respondent Leofwin to declare to him what the Archbishop and the other witnesses testified; but he would not give up the land until the matter was heard in the County Court. Wherefore the king sent his *seal* (or simply his sign, as Dr. Hicks supposed) by the Abbot Alverc to the Court, which was held at *Moshlæwa*, greeting all the *witen* or wise men there assembled, and commanding them to *do right* between Wynfleda and Leofwin. Sigeric, the Archbishop, and Ordbyrht, the Bishop, also sent their testimony; which being read, the Appellant Wynfleda was desired to set forth her claim. This she did, and moreover supported it by the testimony of many other noble men and women. The Court gave

Proceed-
ings on
appeal
from
County
Court to
the King's
Court.

¹ Hicks' Diss. Epist. 7.

judgment in her favour, but declined putting the Respondent Leofwin to the oath, lest, if he were convicted of perjury, he should be compelled to pay the penalty of that offence, besides making restitution to the Complainant.

Antiquity
of written
records.

English Lawyers, so long used to the notion of parchment Rolls and Records, are apt to confine the idea of "Record" to that which is in writing, whereas in old times it really meant what was remembered or recorded by those present, and so certified in solemn form. Men of great learning and research inform us that in this country the usage of having a regular *written record* of judicial proceedings cannot be traced back further than the end of the twelfth century,¹ and we may well assume that before there were written records what was formally said and done in Court had to be *orally proved*. Among the unlettered Northern tribes, from whose primitive institutions much of our Common Law was derived, competent *Recorders* certainly seem to have formed an important part of the constitution of the legal tribunals. By the homely forms then in use, without parchment rolls or *written records*, what was solemnly done or decided had to be *recollected*, or *recorded* by those specially called on for the purpose, and every solemn act or form to be gone through in the presence of the Judges, or other *steadfast* witnesses, in whose memory it had to rest, in order to be *recorded* and *certified* when afterwards required.

Oral
records.
Custom
among the
Northern
tribes.

In the ancient laws of the Scandinavians,² and the

¹ Sir F. Palgrave fixes this time as the reign of Richard I., and suggests that the old rule as to that period being the limit of *legal memory*, really originated in the fact that before that time either there were no records or they were lost.

² See on this a learned and interesting account in the 'Edinburgh Review' for August 1820, vol. xxxiv.

collection of laws and customs more familiar to the English lawyer, the *Coutumier de Normandie* and the *assizes de Jerusalem* we everywhere find directions for the recording of legal proceedings, and the decision and judgment of the Court by the oral testimony of those who were in attendance; the true and "steadfast" witnesses who were to recollect, in whose memory it was to dwell, and who would thereafter be cited as the *Recorders*. In the *assizes de Jerusalem*, already referred to,¹ the suitor is told, in order to preserve a sufficient record of the decision of his case, to assemble in Court as many competent persons as possible "to hear well and recollect well, in order to be able to record the plea when need shall require;"² and in the *Grand Coutumier de Normandie* there is express definition of the duties and powers of the Recorder. A judgment pronounced by the king, sitting as Duke of Normandy was *recorded* by his testimony added to that of one witness, or the royal judge might substitute three other witnesses in his stead, whilst seven witnesses were required for a record of the Exchequer or of the Assize.³

¹ See above.

² S. 4. "Qui veult tost son plait attendre, il doit faire estre en la Court tant de ses amis com il pora, et prier les que ilz soient ententés as paroles qui seront dites as plaïs, et bien entendre et retenir et que il sache bien le recorder asegars et as connoissances se métier li est."—*Assizes de Jerusalem*, c. 45.

³ "Le Record de Court est record des choses qui sont faites devant le Roy. Toutes les choses qui sont fait devant le Roy pourtant qu'il y en ait une autre avec luy, ont record, le record peult il faire soy et aultre, et si'il ne le veult faire, il peult estre faict par trois autres. . . . Record d'Eschiquier doit estre faict au moins par sept personnes creables, a qui l'on doibt enjoindre qu'ilz diront verité par le serment, qu'ilz ont fait au roi. Et si ilz n'ont faict serment au roi ilz doibvent jurer que ilz *recorderont et diront* verité. . . . Le record peut en des choses qui sont *faites et dictes* ou ottroyes en l'Eschiquier. . . . Record Assize est fait en la maniere comme celui d'Eschiquier. . . . Tout record doibt estre faict de ce que a été dict et ouy."—*Le Grand Coutumier de Normandie*, c. 102, 3, 4, 7.

Trace of
the ancient
system of
recording
in the
practice
of the
Recorder
of London
certifying
City cus-
toms, etc.

Some traces of the ancient system of recording judicial decisions, and verbally certifying the same, in order to have them entered of record in the superior Courts, may even still be traced in the elaborate formalities observed by the *Recorder* of London, when the ancient customs of the City have to be certified by him *ore tenus*—a practice formerly observed also in appeals from the City Court of Hustings¹ to the Court of Appeal at St. Martin's-le-Grand; and quite in accordance with this was the old writ for the removal of a plaint from the County Courts to the superior Courts, where the directions to the Sheriff were "*recordari facias loquelam*," so that all that was required might be done in order duly to *record* the proceedings.²

Official
Recorders
of the
Courts.

The persons who were habitually called in as *Recorders* were of course those best versed in the matters to be

¹ The functions of the Recorder of London are described in the old *Coutumier* of the City, *liber albus*, as follows: "Always to be seated at the mayor's right hand when holding pleas and delivering judgments; and by his lips, records and proceesses holden before the Mayor and Aldermen at St. Martin's-le-Grand in presence of the Justiciars assigned for the correcting there of errors, ought orally to be recorded. And further, the Mayor and Aldermen have been accustomed commonly to set forth all other matters touching the City in presence of his Lordship the King and his Council, as also in all the Royal Courts, by the mouth of such Recorder, as being a man more especially imbued with knowledge, and conspicuous for his eloquence."—*Liber albus*, c. xv. lib. i. part i. p. 38 of Mr. Riley's translation. As to the functions of the City Recorder, and especially with reference to the certifying city customs, etc., see Pulling's '*Laws of the City of London*,' p. 4. In the Recorder's eulogistic speech in Westminster Hall on the 9th of November, in presenting the Lord Mayor elect, when the merits of the rising city luminary are sung, and generally surprising accounts given of his claim to *grand* if not noble *lineage*, the City Recorders have for many years much distinguished themselves. The performances of the late Hon. C. E. Law on some of these occasions were very remarkable; that learned Recorder certainly then showed himself in the words of the old City book—"more especially imbued with knowledge, and conspicuous for his eloquence."

² See on this 3, Blackstone's '*Commentaries*,' 34.

recorded, whether judicial proceedings or ancient laws, and local customs; and it may well be that such recorders were included among the *witen*, *sapientes* or *sages gents* so often mentioned here before the Conquest. The official Recorder of a city or borough must, from his erudition, always have been a person of importance, and, from acting in his original character of a mere *Recorder*, he naturally became the instructor of the less erudite presiding Judges, then the Assessor of the Court, and at length the actual Judge, as the Recorders of our Borough Courts now are.

Though under the Anglo-Saxon system of judicature the position of the lawyers here could not have been a very profitable one, there is, in the collections of laws already referred to,¹ just sufficient reference to the *witen* or *sages gents*, and to the *lawmen* and pleaders, to shew that litigation was not, even in those days, carried on without professional lawyers being occasionally called in. That the *Recorders*, as already suggested, were, for the most part, from a very early period, generally *lawyers* there is little doubt. Who were the pleaders never appears on the reported proceedings; nor are we able to speak with any certainty as to the actual position in the case which the pleader took; whether he openly advocated the case, and appeared as the substitute of the suitor, or merely *stood by*² him as his counsel, to prompt and suggest. We know that there were regular *men of law* and pleaders as far back as it is possible to search; that William the Conqueror, in order to have an authentic record of the laws and customs of England called together a body of English nobles, and erudite English lawyers, to faithfully report on the

Position of
lawyers in
England
before the
Norman
Conquest.

¹ *Ante*, p. 51.

² See *post*, pp. 70-74.

subject;¹ that the old Order of the Coif was, after the Conquest, largely recruited from the Norman lawyers who then came over here; that the old English word *pleader* then gave way to the Norman word *conteur*, and that, when the legal profession here came to be placed under systematic regulations, it is treated as chiefly consisting of the *conteurs*, and learned men of the law.²

Effect of
the Nor-
man Con-
quest on
the legal
profession.

After the Norman Conquest, a state of things arose very different from that which previously prevailed. The Anglo-Saxon rules, which required every suitor, to a great extent, to be his own lawyer, became altogether impracticable when the battle of Hastings placed the Normans in power; and justice had to be administered in a form as well as a language unknown to the native suitor.

On the accession of William the Conqueror the Anglo-Saxon laws and usages were not openly done away with. On the contrary, we have proof of the elaborate provisions made with the professed object of preserving them;³ but much of the old course of proceedings was altogether altered, the old usages ignored, and all property in land subjected to the heavy incubus of the feudal

¹ "Consilio Baronum suorum, fecit summoniri, per universos Angliæ consulatus, Anglos nobiles, sapientes, et suâ lege eruditos, ut eorum leges et vitam et consuetudines, ab ipsis audiret. Electi ergo de singulis patriæ comitatibus viri xii. jurejurando coram rege primum confirmaverunt; ut quoad possent *recto tramite*, neque ad dextram neque ad sinistram divergentes, legum veritatem suarum et consuetudinum sibi patefacere, nil prætermittentes, nil addentes, nil prævaricantes, nil mutantes," etc.—Dugd. Orig. 5, quoting Gerv. Tilb. c. 32.

² *Nest mye a entendu que home ni poit aver consaile de contours et de sages gentz pur soen donant.* 28 Edw. I. c. ii. (articuli super Chartas) made at Westminster 1300. Com. Dig. Maintenance A 5. See 3 Edw. I. c. 29, Westminster 1.

³ See *ante*, p. 59.

system which the new dynasty brought with them. With such changes the rules of law and the practice of the legal tribunals were to the native English a sort of *mystery*, and the aid of skilled lawyers became to the suitor not a mere matter of prudence, but an absolute necessity.

The course of law and justice for nearly two centuries after the Norman Conquest was very materially affected by the establishment of the office of *Grand Justiciar*. This high office carried with it the full authority of the Sovereign, as the fountain of justice, and seems to have been usually conferred on the person possessing for the time being the most influence and power in the state, were he ecclesiastic, soldier, or politician. Legal knowledge, if deemed at all a recommendation, was certainly treated as a matter of secondary consideration.

The position of the *Grand Justiciar* or *Capitalis Justiciarius*.

The Chief Justiciar—*Justitia* or *Justitiarius Angliæ*—was not so much the Chief Judge as the mighty Minister of Justice, the great Potentiary with whom seems to have rested not only the government of the Courts and Judges, but the administration of the affairs of the state, and, in the absence of the Sovereign, the entire rule of the kingdom as Regent or Viceroy.¹

Position of the Chief Justiciar.

Dugdale gives us a list, from the time of the Conquest to the end of the reign of Henry III., of some five-and-twenty grandees who held the position of *Capitalis Justiciarius Angliæ*,² and Lord Campbell has introduced most of these into the first chapter of his 'Lives of the Chief Justices;'³ but, with the single exception of

The Chief Justiciar rarely of the legal profession.

¹ Justiciarius—that is, Viceroy.—3 Selden, 1468.

² Dugdale Orig. Jur. Chron. ser. 1 to 18.

³ 'Lives of the Chief Justices of England, from the time of the Norman Conquest to the death of Lord Mansfield,' by John Lord Campbell. London: Murray. 1849. In 4 Inst. Coke gives (from Rot. Cur. 45 H. 3, 13th cent.)

Glanvill, none of these *Capitales Justitiiarii* seem really to have occupied the position of Judges, or even pretended to any special knowledge of law.

The Chief Justiciars from the Conquest to the battle of Evesham.

The names of Odo, Bishop of Bayeux, William Fitz Osborne, of William Earl of Warrenne, of Flambard, Hugh de Bocland, Hubert de Burgh, and Hugh Bigod have all a place in the history of England, but not properly among the Judges. Odo, half-brother of William the Conqueror, seems on more than one occasion to have made his mark both as a soldier and a statesman, but to have been alike unfit for the judicial as for the episcopal offices which he filled. The Conqueror's companions in the battle-field, Fitz Osborn and de Warrenne successively held the high office of Chief Justiciar—with certainly no greater pretensions to judicial aptitude,¹ and far less apology can be made for Flambard (the boon companion of the profligate William Rufus), who is included in the *chronica series* of Dugdale, and occupies a place among the *Chief Justiciars* in Lord Campbell's 'Lives of the Chief Justices.'²

Flambard spoken of as Chief Justiciar.

the patent of Philip Basset, the last of the Chief Justiciars, where he is called *Justitiarius Angliæ*.

¹ The powers and duties of the office of Chief Justiciar in the south of England devolved on Odo, whilst in the north, they devolved on William Fitz Osborn, the Conqueror's Commander-in-Chief. William Earl of Warrenne was second in command at the battle of Hastings, and his colleague in the office of Chief Justiciar, *Richard le Benefacta de Troubridge*, was the son of a powerful Norman Earl.

² Ralf Flambard seems to have come over with the Conqueror in the capacity of chaplain, and so continued under William Rufus, the caterer to his royal extravagancies, whom one historian designates as "*summus regiarum procurator opum*," others "*placitator et exactor totius Angliæ*," and "*procurator Regis*." Flambard continued to supply the royal wants by getting hold of the Church revenues, and, having obtained for himself the bishopric of Durham in 1099, paid to his royal master £1000 for this advancement. He is supposed to be the same Ranulphus who is spoken of by William of Malmesbury as one of the ecclesiastics of the time known

These lists of Chief Justiciars include, not only the names of men distinguished in the battle-field or the councils of the nation, but of one who was afterwards King of England. In 1253 an arrangement was come to between King Stephen and Prince Henry, the acknowledged heir to the throne, that the latter should at once be Chief Justiciar; and he held that high post accordingly until he succeeded Stephen on the throne twelve months afterwards as Henry II. He was then only just of age, and it can hardly be said, notwithstanding statements to the contrary, that Henry II. had ever really presided as Chief Justiciar.¹

Henry
Duke of
Normandy.

as *invictus causidicus*. Flamhard's name appears in Dugdale's list 'Justiciarium Angliæ;' but Mr. Foss, 'Judges of England,' tit. Flamhard, shews by reference to the writers quoted by Dugdale that there is small authority for this. Lord Campbell, however, not only includes Flamhard among the Chief Justiciars ('Lives of Chief Justices,' vol. i. p. 15), but among the Chancellors ('Lives of the Chancellors,' vol. i. ch. 2), and actually goes on to tell us how he was the first judge who ever took his seat in Westminster Hall after it had been built by William Rufus. "This being completed at Whitsuntide 1099, the Chief Justiciar Flamhard sat here in the following Trinity Term; and the superior Courts of Justice have been held in it for seven hundred and fifty years" (i.e. ever since). We shall have occasion hereafter to show the remarkable inaccuracy of this statement so far as relates to the judicial sittings in Westminster Hall, see *post*, p. 81, and Mr. Foss shows the inaccuracy of Lord Campbell's account of Flamhard, who is called by the old chroniclers not *Justiciarius Angliæ*, but *placitator et exactor totius Angliæ*. See Foss' 'Judges of England,' title Flamhard.

¹ Henry, Duke of Normandy, became Capitalis Justiciarius Angliæ in 1153, and on the death of Stephen the year following, became King of England. He was born in 1133, and was therefore *only twenty years* of age when he was made *summus Justiciarius Angliæ*, having moreover abundant avocations to preclude him even making his appearance in that capacity. Lord Campbell, however, has not only given a place in his book to this Royal Justitiarius, but described the sittings and judgments of his Court, gravely saying, in reference to Henry II., "I shall not attempt to rival Lord Lyttleton by attempting a history of *this Chief Justiciar* from his cradle to his grave; I must content myself with saying that he held the office above a year. *During the first six months he actually presided in the*

Glanvill
as Chief
Justiciar.

From the institution of the office of Chief Justiciar at the Conquest to its abolition soon after the battle of Evesham, the calendar contains the name of one only who was a lawyer. Ranulph de Glanvill, the first in the list of great writers on the laws of England, "*Cujus sapientia*," to use the words of Hoveden,¹ "*conditæ sunt leges subscriptæ, quas Anglicanas vocamus*."

However obtained, the office of Chief Justiciar carried with it as long as it lasted, far greater powers than those of a merely judicial character. As already stated the Capitalis Justiciarius was really at the head of the state, in the king's absence the actual Regent.

Presiding in the Aula Regis, writs being issued and

Aula Regis, and with the assistance of the Chancellor, the other great officer of state, decided the causes civil and criminal which came before this high tribunal."—*Lives of the Chief Justices*, 1st vol. p. 17.

¹ Hist. 600. Glanvill clearly belonged to the legal profession. Lord Campbell, without citing any authority for the notion, says, "From his knowledge of practice, and also the forms of procedure, there seems reason to think that he must sometime have acted as *Prothonotary or Clerk of the Court*" (*Lives of Chief Justices*, vol. i. p. 19, note). There is much greater reason to believe him to have been a regular member of the Order of the Coif. He appears not only to have served as one of the Justices itinerant before 1180, when he was selected for Chief Justiciar, but Madox gives his name with five others as "*Justitiæ in curia regis constituti ad audiendum clamores populi*."—Exch. I. 77. This was apparently the old office of Triers and Receivers of petitions, so often entrusted to the Judges and Serjeants, see *post*, p. 79. Glanvill was of noble birth—*vir præclarissimus genere*—as Lord Coke describes him (Pref. to 8th Report, xxi.)—was neither a clerk in orders, or likely to have served in the capacity suggested by Lord Campbell.

Glanvill's career was altogether remarkable. Like almost every one in power in those rough days, he seems to have been ever ready to draw his sword at the call of honour or duty. When Sheriff of Yorkshire in 1164 it was his lot to have a personal encounter with the Scottish King, William the Lion, whom he took prisoner, and carried in triumph to his royal master. And further, after he had filled the high post of Grand Justiciar, he again buckled on his armour, shared the fortunes of war with Cœur de Lion in the Holy Land, and lost his life at the siege of Acre in 1190.

other proceedings carried on in his name, he was the head of the judicial staff; but it would seem as if that staff was chiefly selected by himself. Such appears to have been the case with respect to the circuit judges.¹

To the Chief Justiciar specially belonged the power of deciding in all matters, directly affecting the Crown, and the supreme jurisdiction in pleas of the Crown. When one of the early charters of London gave to the citizens the power to elect and appoint their own Justiciar independent of the Crown, it conferred on them within their own territory an actual independence not possessed by any other class.²

Pleas of
the Crown.

The *summus Justiciarius*, assisted by subordinate Justices, seems regularly to have made his *iter*, or circuit for enquiring into matters affecting the Crown, and it was to the King's Justiciar that the persons elected as Mayors, and Justices of London, were required to be presented.³

The *iter*
of the
Chief
Justiciar.

¹ "We, or our Chief Justiciar, if we should be in England, will send Justiciaries into every county once in the year, who, with the Knights of each county, shall hold in the county, the aforesaid assizes, and those things which, at the coming of the aforesaid Justicers being sent to take the said Assizes, cannot be determined, shall be ended by them in some other place on their circuit; and those things which, for difficulty of some of the articles, cannot be determined by them, shall be determined by our Justicers of the Bench, and there shall be determined."—*Magna Charta*, 9 Hen. 3. xiii. 14–15.

² "The said citizens shall appoint such person as *Justiciar* from among themselves as they shall think proper, to keep the pleas of the Crown, and to hold such pleas; and no other person shall be Justiciar over the said men of London."—*Charter of Henry I. to City of London*.

The title of *Justiciar* is stated in one of the Guildhall records to have been borne by the head of the civic body long before he acquired the name of *Mayor* at the end of the 12th century, see *Liber Albus*, b. i. pt. 1, p. 13, fol. 2 a, quoting another city book '*Liber Custumarum*.' fol. 187.

³ The City Charter, granted by John, 9 May, A. R. 16, 1215, directed the Mayor to be presented to the King or his *Justiciar*. When, at the latter end of the reign of Henry III., the Justiciar's office and power were

The Justiciars at the Tower.

The proceedings of the King's Justices on their iter were very formal. The city *Liber Albus* describes the manner and order in which the citizens ought to behave towards the King and his Justiciar when it should please the King to hold the pleas of the Crown at the Tower of London, as to attachments and misadventures that had taken place in that city; and some of the directions and precautions on the part of the city are certainly remarkable, for they embrace not only the work of providing good seats in the Great Hall at the Tower, for everybody concerned, from the King and his Justiciar to the aldermen and citizens,¹ but in accordance with City manners, plans for conciliating the Justiciars, and courting their favour and good will "by making ample presents to them."²

on the wane, the presentation came to be before the *Barons of the Exchequer*, in case of the absence of the King himself from London or Westminster, the person chosen to be again presented to the King on his return.—Charter to City of London, 37 Henry III. The ancient practice of presenting the Lord Mayor of London to the Chief Justiciar became gradually changed into the merely formal ceremonial that now takes place every November before the Lord Chancellor. See on this Norton's 'Commentaries on the City of London,' ed. 3, p. 318.

¹ "By common assent of the City, injunctions should be given to the two Aldermen whose Wards are nearest to the Tower of London, to the effect that, upon the third day before the Pleas of the Crown are holden, they must enter the Tower for the purpose of examining the *benches* in the Great Hall to see if they are sound; and if they should happen to be broken, they must cause the same, at the costs and charges of the City, to be well and strongly repaired. In like manner also they must have a strong bench in the middle of the hall, with seats for three, the same to stand in the middle of the hall, opposite the great seat of his lordship the King; and upon this the Mayor and Barons of the City are to be seated, when making answer unto his lordship the King and his Justiciars, as to matters which pertain unto the Crown."—'*Liber Albus*,' b. i. p. 2, c. xvii. p. 53, of Mr. Riley's edition.

² "Seeing that it is quite impossible for the Barons and the body of citizens of London to do otherwise in the Pleas of the Crown than pass through the hands of the King and his Justiciars, it is matter of necessity

The great power of the Chief Justiciar seems ever to have been an object of anxiety to the Crown and terror to the country. We need not remind the reader of old conflicts between King and Barons on the subject of the office of Chief Justiciar,¹ and how, at the latter end of the reign of Henry III., the office was abolished.

Discontinu-
ance of the
office of
Chief
Justiciar.

Who may really be called the last Capitalis Justiciarius must be a matter of discussion, but it is pretty clear that, except for a mere temporary purpose, the office came to an end in 1261. Dugdale names Philip Basset² as the last, and though, according to Lord Campbell, there is some ground for including among the Capitales Justitiarum, the names of the great English lawyer, Henry de Bracton, and the Scottish magnate, Robert de Brus, who are both placed among the Chief Justiciars, in the first volume of Lord Campbell's work, Dugdale's account will probably be the safest to rely on,³ as Bracton's office clearly was that of Chief Justice

Philip
Basset the
last of the
Justiciars.

that the Barons and all the citizens should court their favour and good will; by *making ample presents to them*, that is to say, and to their clerks; *seeing that the ancestors of the barons and citizens of London*, who, in their day, so manfully and so strenuously ruled and defended the City, and the liberties and customs of London, were *wont to do the same*. And therefore, forasmuch as it is no dishonour or *di grace* for us to follow in the footsteps of *our ancestors who in former times showed such tact*, it can only be to our advantage to do the same as they did; to the end that by objections raised by such persons the citizens may not be molested and disturbed; but rather, on the contrary, in the enjoyment of their liberties may be peacefully maintained."—'Liber Albus,' b. i. pt. 2, c. xviii. p. 53.

¹ Hubert de Burgh, who had held the office, off and on, from the time of King John, was in 1227 appointed for life, and on his death the place seems to have been one continued subject of contest between the Barons and the Crown until it was abolished.

² 45 H. 3, A.D. 1261.

³ Dugdale says, "Of those who had the office of Chief Justiciar, Philip Basset was the last, the King's Bench and Common Pleas having afterwards one in each Court."—Orig. Jur., ch. 7, p. 20. Philip Basset ceased to be Chief Justiciar after the battle of Lewes in 1265, when he was taken

of the King's Bench rather than Chief Justiciar; and De Brus, after holding the rank, power, and profits of the office of Chief Justiciar during the four years that intervened till the death of Henry III., seems, even by Lord Campbell's account, not only to have been quite unfit for the office, but to have hardly exercised it so far as concerned the administration of justice, never certainly with credit to himself, or advantage to the community.

Position of
Robert De
Brus.

On the death of Henry III. Robert de Brus was not reappointed. Even Lord Campbell is compelled to remark that "there is reason to fear that he was not much better qualified for the office than the military chiefs who had presided in the Aula Regis, before the common law of England was considered as secure. He was so much mortified by being passed over that he resolved to renounce England for ever; and he would not even wait to pay his duty to Edward I.;" and we are told that "the Ex-Chief Justice posted off for his native country, and established himself in his Castle of Lochnaber, where he amused himself by sitting in person in his Court Baron, and where all that he laid down was no doubt heard with deference, however lightly his law might have been dealt with in Westminster Hall."¹

prisoner with his royal master. The time when Bracton could have been Chief Justiciar was within the succeeding two years, as he died in 1267. The name of Robert de Brus appears as Chief Justice of the King's Bench in 1268.

¹ 'Lives of Chief Justices,' vol. i. p. 66. Lord Campbell, as a set-off against De Brus' bad law, makes out that he was of the blood royal, for he says Brus "was the head of a great Norman baronial house; he had in his veins the blood of the Kings of Scotland; he enjoyed large possessions in that kingdom; he was in succession to a throne; he actually became a competitor for it. *His grandson, after giving the English the severest defeat they ever sustained, swayed the sceptre with glory and felicity, and*

It is not altogether easy to describe the exact position of the Order of the Coif at the early period embraced in this chapter. The records left us of the proceedings in the Anglo-Saxon Courts, and the *Curia Regis*, are very meagre. They rarely give the names even of the Judges, never of the pleaders; but such omissions little justify the inference that *the law* was then or at any other time *administered without the lawyers*; and usages and customs carefully kept up for so many ages, serve to show, from a date sufficiently remote, what was the ancient and legitimate position of the Serjeants of the Coif.

Legal position of the Serjeants-at-law during the period embraced in this chapter.

The old order, so long in existence here,¹ and reinforced from the *Conteurs*, who, at the Norman Conquest, came over here from Rouen, constituted, it is certain, for many ages, *the English Bar*, performing all the duties and obligations belonging to that position: always to be found at their post by those who sought their aid; *standing by* the litigant—claimant or deforciant, suitor or defendant, prosecutor or prisoner—in the hour of trial,² in loyal accordance with the spirit of the ancient oath—"truly to serve the *King's people*," and truly and loyally to counsel and aid their clients without delay or deceit.³

our gracious Queen Victoria, in tracing her line to the Conqueror and to Cerdic, counts the Chief Justiciar among her ancestors."—'Lives of Chief Justices,' vol. i. p. 64.

¹ *Ante*, p. 2. Coke's preface to 10 Rep. X. 'Mirror of Justices,' lib. ii. c. *des Lóiers*.

² See *post*, p. 74.

³ "You shall swear well and truly to serve the King's people as one of the Serjeants-at-law; and you shall truly counsel them that you be retained with, after your cunning; and you shall not defer, or delay their *causes* willingly, for covetousness of money, or other thing that may turn you to profit, and you shall give due attendance accordingly; so help you God."

The
Serjeant
Counters
at St.
Paul's.

The Serjeant Counters assembled in the *Forum* of *London*—the Parvis of Old St. Paul's Cathedral¹—engaged each at his allotted pillar, in legal consultation, hearing the facts of the clients' case and taking notes of the evidence, or pacing up and down like the advocates in the *Forum Romanum*, are equally well recorded by chronicler and by poet.²

The Roman
lawyers in
the Forum.

The assembling of the Roman Jurisperiti at early morn "sub galli cantum,"³ and their peripatetic exercise up and down the Forum, in actual consultation, or ready to confer with the consultores or clients, is described by Horace and many other writers,⁴ and such gatherings of lawyers in the "*market places*" seem to have been usual almost always.⁵

What the Roman Forum was in the days of Mutius

¹ Chaucer's description of the Serjeant-at-law at the Parvis has already been referred to. See *ante*, p. 3.

² Sir John Fortescue, writing in 1466, tells his royal pupil:—"The Judges of England do not sit in the King's Courts above three hours in the day, that is from eight in the morning till eleven. The Courts are not open in the afternoon. The suitors of the Court betake themselves to the *Pervise*, and other places to advise with the Serjeants-at-law, and other their counsel, about their affairs."—*De Laud. leg. Angl. c. li. p. 120.* Sir William Dugdale, writing in 1666, a few months before the Great Fire of London, when Old St. Paul's, and the Parvis and the ancient pillars were all destroyed, refers to the old custom when "at St. Paul's each lawyer and Serjeant at his pillar heard his clients' cause and took notes thereof upon his knee as they do at Guildhall at this day," and goes on to say, that, "after the Serjeants' feast ended, they do still go to Paul's in their habits, and there choose their pillar whereat to hear their clients' cause (if any come), in memory of that old custom."—*Orig. Jur.* 142.

³ "*Agricolam laudat juris legumque peritus*

Sub galli cantum consultor ubi ostia pulsat."—*Horat. Sat. I. i. v. 9.*

⁴ See on this Sir Patrick Colquhoun's '*Civil Law*,' and Niebuhr's '*Lectures*,' ii. 18.

⁵ We have some reminiscence of the olden custom in the practice of the Members of the Faculty of Advocates parading the Parliament House in Edinburgh in Term time ready to be retained or consulted; and see *post*, p. 71.

Scævola and Cicero, the Parvis at St. Paul's seems for many ages to have been to the lawyers here. The Parvis, or Paul's Walk,¹ was, in days long gone by, the great place of general resort, and the reader may, perhaps, call to mind descriptions of the scenes occurring there, given by historian, antiquary, and novelist.²

The use made of *Paul's Walk* seems long to have been deemed a desecration, but certainly so far as concerns the assembling of lawyers, we have abundant proofs of St. Paul's not being the only church³ where lawyers and clients used to attend a consultation and dispose of law affairs.⁴

¹ *Parvis* strictly meant only the church porch, but in the case of St. Paul's clearly comprehended the nave or middle aisle of the old Cathedral, or Paul's Walk.

² The middle aisle in Old St. Paul's is continually referred to by writers of the sixteenth and seventeenth century as Paul's Walk. It is described in the plays of Decker as in the sermons and writings of Bishop Earle, not only as the *rendezvous* of lawyers and their clients, but as a sort of public market-place or exchange; and moreover a political synod, a fashionable promenade, a regular place for all kinds of assignations. In Mr. Harrison Ainsworth's novel of 'Old St. Paul's,' several scenes are laid in this well-known place of public resort.

³ The *Court of Arches*, with jurisdiction not only in ecclesiastical cases but in all the range of civil business which the Ecclesiastical Laws embraced, was so called from its having been originally held under the arches of the church of St. Mary-le-Bow in Cheapside. See Strype's 'London,' lib. i. p. 153.

⁴ Before the building of the *Palais de Justice* at Rouen, the lawyers usually met, and all the Courts of law were held in the *Cathedral*. In consecrating a new church it was not unusual in this country for the bishop to pronounce a curse upon all who "should make a law court of it." As late as the time of James I., we are told that the Round of the Temple Church "was used as a place where lawyers received their clients, each occupying his own particular post, like a merchant upon change."—Peter Cunningham's 'Handbook of London,' vol. ii. p. 391. Ben Jonson in the 'Alchemist' refers to such business appointments in the *Round* of the Temple Church. This agrees with the passage in Middleton's '*Father Hubbard's Tales*,' "and for advice twixt him and us he had made choice of a lawyer, a mercer, and a merchant, who that morning were appointed to meet him in the Temple Church."

Range of
work of
the
Counters.

The range of legal work of the Serjeants of the Coif was sufficiently comprehensive. It included, according to the 'Mirror of Justices,' criminal as well as civil business,¹ but there certainly seems to have been at all times abundant occupation for the old Order of Serjeants of the Coif without their having to attend the Criminal Courts as counsel for prisoners.

The Ser-
jeants-at-
law in
cases re-
lating to
real pro-
perty.

It must be borne in mind that *real actions*—those which related to *real property*—were chiefly if not entirely disposed of in the Court of Common Pleas, or the *Common Bench* of the King's Justices in the *Aula Regis*,² and that from time immemorial the practice in this tribunal and generally in matters affecting landed property devolved on the old order—the Serjeants-at-law, who had also on their hands other work of rather a different character, perhaps occupying more of their ordinary time, and deserving especial notice here.

¹ "Because the people commonly know not all the exceptions in pleadings, Counters are necessary who know how to advance and defend their clients' causes according to the rules of law and the customs of the Realm, and the more needful are they to defend them in indictments and appeals of felony, than in personal or venial causes."—"Mirror of Justices,' cap. 3, s. 7. 4 Bl. Com. 355. This passage is very remarkable, inasmuch as it suggests that at the time from which the work dates, prisoners tried for felony were allowed what, until the passing of the Prisoners' Counsel Act in 1836 (6 & 7 Wm. IV. c. 114), was long denied them, "to make full answer and defence by counsel." Blackstone speaks of the restriction in question as not being a part of our ancient law, and in proof quotes the above passage from the 'Mirror.' 4 Com. 355. Some writers trace this innovation to the laws of Henry I., which (c. 7) provide that "*de causis criminalibus vel capitalibus nemo quærat consilium.*" Doubts have been thrown on this point, but it is clear that for ages before the Prisoners' Counsel Act, the restriction which that Act removed, was regarded by the best English Judges altogether as an anomaly.

² Co. 4 Inst. 98. See *post*, p. 97. The unprofessional reader must be reminded that until the middle of the 15th century actions relating to land were all called real actions or *actiones in rem*. The forms adopted in the procedure from the writ original to the *conte*, and the subsequent pleading to the judgment, with the forms in the assize, *de Novel disseisin*, *mort d'ancestor*, etc., etc., were models of conciseness.

Nearly up to the end of the thirteenth century a great deal of the ordinary business of litigation took place in the local Courts; and even the old Saxon institution, the County Court, continued to exist with much of its original jurisdiction; and the oldest of the tribunals of the City of London, the Court of Hustings, continued long afterwards to occupy a very important position, having original jurisdiction in *pleas of land and common pleas* to any extent, if the cause of action arose within the local boundary—affording sufficient employment for the legal profession; and in other places there were ancient local Courts with corresponding powers and jurisdiction.¹ In some of such local Courts, especially those of the City of London, the services of the Brothers of the Coif were no doubt very often called in; and taking into account the duties of the Serjeants-at-law as *Members* of the Court of Common Bench or Common Pleas,² and their various other avocations—their duties in aid of the established Judicature as of the Legislature—there can be little doubt that their hands were sufficiently full.

The local Courts.

At the period we are now speaking of, the lawyer's work was certainly carried on in a manner somewhat different from that now in vogue. The modern English Bar recognises no *Clients* but solicitors. The ancient order knew not attorney, or solicitor, or middle man. Every member of the order communicated directly with the suitor who sought his aid. In his own chambers, at his wonted pillar in the *Parvis*, in the *Aula Regis*, or the Hustings, or at the local Courts, civil or criminal,³

Ordinary practice of the Serjeants of the Coif.

¹ There were old Courts of Hustings at York, Winchester, Bristol, and Exeter.

² See *post*, chapter iii.

³ In one of the learned notes of Serjeant Manning to his report of the

or *wherever else he could* be most serviceable, the old Serjeant Counter was at the proper time always to be found at his post. As Counsel, as Advocate, or merely as Draftsman he was accessible to all.

The learned Brother of the Coif, duly retained, gave, as he was bound to do, his legal aid to his client, and *stood by him*¹ in the hour of trial. It would seem from the old cases as if the Serjeant Counter had no choice in this matter. Duly retained *pur son donant*, by the ordinary suitor, he could not throw up his case, and even if he refused to accept a retainer or to act with and for a poor suitor, the Court would peremptorily compel him to do so.²

Old law as
to inter-
vention of
Attorneys.

With reference to the ancient practice of the Serjeants-at-law it must be borne in mind that up to the beginning of the thirteenth century there was no general right to appear *by attorney* or substitute in an action or suit; and

Serjeants' case in 1834, there is given from the Harleian MSS. in the British Museum (298, fol. 56) the entry of a plea pleaded by Serjeant le Mareschall in an action in the King's Bench, sitting at Oxford in 1297, arising out of some previous proceedings where he had been counsel, and the Serjeant pleaded that he was a Common Serjeant Counter, *Coram Justitiariis et alibi ubi melius ad hoc conduci poterit*, and that he, in the case referred to, stood with the said John before the said Justices, and assisted him therein as much as he could, *tanquam Serviens suus et sicut talibus servientibus in hujusmodi casibus licet*.

¹ It appears anciently in Scotch civil cases that the Advocate *stood by* the side of the party, *per Campbell*, Lord Chief Justice, in *Doe dem Bennett v. Hale*, 15 Q. B. Rep. 177.

² See on this Viner's 'Abridgment,' Pauper D. The power of the Superior Courts to order counsel to act for paupers has existed from a very early period. Long before the statute relating to suits *in formâ pauperis*, 11 H. VII. c. 12, 1495, it was laid down by the Justices of the Court of Common Pleas that if a Serjeant-at-law, on being assigned by the Court as Counsel refused to act, they could compel him to act whether he was willing or not. See *Paston v. Genney*, Year-book, 11 Edw. IV. fol. 2, pl. 4 (cited by Sir William Follett in arguing the 'Serjeants' Case,' 1834, *Manuing's Report*, p. 41).

that the clients or suitors had no alternative but each to select and retain his own counsellor, and throughout the legal business always to communicate with and duly instruct him personally.

The rule of Bar etiquette to which we have referred certainly has not old observance to recommend it; but seems rather to be of very recent growth. There is hardly any trace of it before the beginning of the last century. It had no existence in the days of Sir Matthew Hale¹ and Lord Keeper Guilford;² and the pictures we

Recent
growth of
Bar eti-
quette.

¹ Roger North says of Hale that "he did not take the profits that he might have had by his practice, for in common cases when those who came to ask his counsel gave him *a piece* he used to give back the half, and to make ten shillings his fee in ordinary matters."—"Life of Lord Keeper Guilford," i. 117. Bishop Burnet tells us that "many had so abused Hale's goodness as to mix base money among the fees given him," p. 52.

² Roger North says of Lord Keeper Guilford that "soon after his call to the Bar he began to feel himself in business, and as a fresh young man of good character had the favour of divers persons; that out of a good will went to him, and some near relations," and that when asked if he took fees from them, said, "Yes; they come to me to do me a kindness, and what kindness have I if I refuse their money?" Lord Guilford's biographer tells us that "one thing was principally his care, which was to take good instructions in his chamber." He "perused all the deeds, if it were a title; and not seldom examined the witness if it were a fact;" and, to use the words of Roger North, "nor can I say upon my memory how many families of nobility and others having once made use of his advice, made him afterwards arbiter of their concerns."—North's 'Life of Guilford,' p. 55. In the case of *Cutts v. Pickering* (reported in 1 Ventris, 197, without the names of counsel) Lord Guilford appears to have been placed in a very remarkable position. Pickering had admitted to a solicitor he had consulted that a certain interlineation in the will in question was made by himself. He had then gone to North (Lord Guilford), with whom he was connected by marriage, but was not on the most satisfactory terms, for, according to Roger North, "he never had the civility to offer a fee or to ask his lordship to be of counsel with him in general or particular, or on any account whatever. I remember one night his lordship came out from his study, having just parted with him in a great pet, *wishing mortally that his adversary would come and retain him, that he might shake off so troublesome a fellow; and the next day Mrs. Cutts came with much apology for the presumption in tendering a retainer in her case against Mr. Pickering, fearing he might be under engagements to*

have of legal life by Wycherley¹ and Sir Richard Steele² show very distinctly Gentlemen of the Long Robe acting as counsel and advocates, wholly untrammelled by "instructions" from attorneys and solicitors; and Hogarth and other artists of the last century have left us pictures of barristers in consultation with, and professional attendance on their clients in all kinds of legal business, without the presence of solicitors.³

Case of
Doe dem
Bennett v.
Hale.⁴

Thirty years ago a barrister who had long waged war against professional etiquette, having appeared as Counsel on the trial of an action instructed directly by one of the parties, *without the intervention of an attorney*, and the learned Judge having refused to hear him, the Court of Queen's Bench granted a new trial on the ground that such a mode of conducting a case was in no way *illegal*; and Lord Chief Justice Campbell in giving judgment went fully into the old legal rules and cases on the subject, which have already been referred to here. Lord Campbell seems certainly to have attached

him. His lordship told her no, and took her fee and wrote her down in the book of retainers, so she went away satisfied, and well she might be, for that moment's work saved the estate."—North's 'Life of Guilford,' p. 59.

¹ In Wycherley's 'Plain Dealer,' the second scene in the third act is in "Westminster Hall—a crowd of people, Serjeants, Counsellors and Attorneys walking briskly about," and the widow Blackacre, who has a cause in almost every Court, is personally instructing Mr. *Serjeant Plodder* and Counsellors Quillet and Splitcase. Wycherley, who was brought up in the Temple and intended for the Bar, drew his pictures from actual life.

² In Steele's 'Conscious Lovers,' *Serjeant Target* and *Counsellor Bramble* meet in Mrs. Sealand's house to arrange the terms of settlement on a projected marriage between their clients. Sir Richard Steele was the son of a barrister of high position, and in his caricatures would not lose sight of the original characters.

³ In Hogarth's 'Marriage à la Mode,' the Counsellor in his wig and gown is shown in attendance on the affianced bride and bridegroom, taking instructions for the marriage settlement.

⁴ Doe dem. Bennett v. Hale, 15 Q. B. Rep. 171.

some importance to this case, for he referred to it afterwards as “the only *memorable judgment he pronounced during that term.*”¹

It has been sufficiently shown that the innovations on the ancient usages of the English Bar—on the inartificial rules of the *Conteurs et sages gents* of old times—are for the most part of recent growth; and according to some accounts of the present usages and practices at the Bar, arising from the competition of more recent times said to prevail among a certain class of members of the profession, and of the questionable expedients sometimes resorted to by unscrupulous practitioners, the modern rules of *etiquette* are certainly *not more efficacious* in checking abuses, or really upholding the honour of the Bar, than the homely discipline of the old Brothers of the Coif.

Compara-
tive ad-
vantages of
ancient and
modern
rules of the
Bar.

¹ “The only memorable judgment which I pronounced during this term was very interesting to the profession, as it discussed the question, ‘whether a barrister may hold a brief in a civil suit without the intervention of an attorney?’ *I traced the history of advocacy in England, introducing—*

“‘*The Serjeant of the law, wary and wise,
That often had y-been at the Parvise.*’”

‘Life of Lord Campbell,’ vol. ii. p. 277.

CHAPTER II.

THE AULA REGIA, CURIA REGIS, AND WESTMINSTER HALL.

THESE subjects are here thrown together, though many of the topics we have to enter on are somewhat distinct from one another.

“Curia Regis” was really the name given after the Conquest to the great assembly periodically called together *in the Aula Regia* of the Palace where the King resided at the time.¹ Like the old witenagemote,² which it superseded, the Curia Regis was presided over by the King, or his Lieutenant or Viceroy, the *Justiciarius Angliæ*.³ The Court was attended by the King’s ministers and great officers of State, the Chancellor, the Constable, the Marshall, the Lord Steward, and the Chamberlain, as well as by the Barons of the Realm, and the sages of the law, the *Justicers*, or Judges and Serjeants, and for upwards of two centuries after the Conquest this Curia Regis constituted the great Tribunal of the Kingdom, like the Parlement de Paris, invested with functions

¹ See Bracton, lib. 3, tit. 1, de actionibus, p. 161 of the edition by Sir Travers Twiss, quoted more at length, *post*, p. 80.

² The witenagemote seems to have been not only a gathering of the *witen* for the affairs of the state, but for redress of private grievances, forming the chief tribunal in both civil and criminal matters. See Lambard, Arch. 57, Madox, Exch. 7.

³ See on this 3 Blackstone’s Com. 37, May’s ‘Law of Parliament,’ c. 19.

and powers, both judicial and legislative, a jurisdiction in civil as well as criminal cases, and in reference to legislation, the duty of dealing with the petitions for redress of grievances, and recording the ordinances made on the occasion.¹

We have evidence of the recognition of the powers of the great Tribunal we are speaking of, in several of the ancient statutes which are expressed to be made in *Curia Regis*,² and in reference to the work of legislation we have in the practice of appointing *Receivers* and *Triers* of petitions, a vestige of the ancient functions of the Curia Regis, and its legal officials, the Justicers and Serjeants.³

The ancient petitions to the Curia Regis seem generally to have been for the redress of private wrongs; and the work of receiving and trying such petitions might perhaps be deemed of a judicial rather than a legislative character. When the appointment had been duly made of the Receivers and Triers of petitions, proclamation was made inviting all petitioners to resort to the Receivers (the clerks of the Chancery and others), who, sitting in some public place accessible to the people, received the complaints and transmitted them to the Auditors or *Triers* (chosen from the Prelates, Peers, and Judges, assisted by the Lord Chancellor, the Lord Treasurer, and the Serjeants-at-law), and, after due examination, the Petitioners were left to their ordinary

Ancient
petitions
for redress
of griev-
ances.

¹ The French *Parlement* dating back its judicial powers to *Pepin le Bref*, in the beginning of the eighth century, early acquired as a special attribute, the authority of registering or recording the Royal Edicts, ordinances, and letters patent.

² The statute of Merton in 1236 expressly states that it was made in *Curia Domini Regis* [which was then being held at Merton Abbey].

³ See *post*, p. 82.

legal remedy, or the matter was dealt with as one for legislative relief.¹

Arrangement of legal business in the Aula Regis.

It is quite beside our purpose to enter on the subject of the practice of the Aula Regis before that great Tribunal was, six centuries ago, divided into the several Benches at Westminster Hall, so recently dealt with and reconstituted the *Supreme Court of Judicature*. Madox tells us how regularly in the early days of Westminster Hall the Justicers formed themselves into separate Courts as occasion required, how when they sat in the Hall they were a Court Criminal, and when up the stairs a Court of Revenue,² etc. In the arrangement of these Courts, the times and places for the sittings of the Judges, and the allotment of their work the procedure rules of the thirteenth century do not really seem to have been very much more impracticable than some of more recent contrivance.

Bracton's reference to the Aula Regia.

Identity of Westminster Hall with the Aula Regia.

The expression Aula Regia is used by Bracton as if synonymous with *Curia Regis*,³ and the ordinary law student is quite accustomed to Aula Regia meaning Westminster Hall, and to look upon Westminster Hall as *originally designed* for the great purposes to which it was at least for five centuries so well devoted—a mistaken notion originating in the rather indistinct way in

¹ See on this May's 'Law of Parliament,' c. xix., Coke's 4th Inst. 11, Elsynge, c. 8. Sir Erskine May observes, "The functions of receivers and triers of petitions have long since given way to the immediate authority of Parliament at large: but their appointment at the opening of every Parliament has been continued by the House of Lords without interruption. They are still constituted as in ancient times, and their appointment and jurisdiction are expressed in Norman-French." 'Law of Parliament,' c. xix. See 73 Lords Journ. 579, 80 ib. 13.

² Mad. Exchequer, c. 9.

³ "Habet enim plures curias in quibus diversæ actiones terminantur, et illarum curiarum habet curiam propriam sicut Aulam Regiam."—Bracton, de Actionibus, lib. 3, tit.

which the subject is treated by writers of repute.¹ And even the late Lord Campbell seems to have been entirely misled; for he not only speaks of William Rufus having built the Westminster Hall now in existence, but fixes the very date of its being opened for the Law Courts as *Trinity Term, 1099*.²

This is certainly not correct. Though the designation of Aula Regia applied to the hall of every palace where

¹ In speaking of the clause in Magna Charta directing common pleas to be held "in aliquo certo loco," Blackstone says "this *certain* place was established in Westminster Hall, the place where the *aula regis* originally sate *when the king resided in that city*" (3 Bl. Com. 37).

² 'Lives of the Chief Justices,' vol. i. p. 15, published in 1849, where, after referring to the erection of the Palace of Westminster, which he tells us "was enlarged and beautified by Edward the Confessor, but *was still mean compared with the stately structure erected by the Normans at Rouen*," Lord Campbell goes on to say, "The Conqueror, although he observed that it contained no hall in which the great council of the nation could assemble, or in which justice could conveniently be administered, had been too much occupied with graver matters to supply the defect; but William Rufus built, adjacent to the palace at Westminster, the magnificent hall which is looked upon with such veneration by English lawyers, and which is the scene of so many venerable events in English history, *this being completed at Whitsuntide 1099 the chief justiciar Flambard sat here in the following Trinity Term; and the Superior Courts of justice have been held in it for 750 years.*"

This passage is really a fair sample of the misleading statements to be found in Lord Campbell's works. The writer having been Lord Chief Justice and Lord Chancellor, it is difficult to excuse the many gross anachronisms perceptible throughout his account:—"The magnificent hall, which is looked upon with such veneration by English lawyers," was not, as Lord Campbell so solemnly asserts, *completed at Whitsuntide 1099*. It was not really in existence till under Edward III. and his famous minister William of Wykeham, the present hall was erected on the ruins of the old. It was completed in 1378, see *post*, p. 82. Of the Palais de Justice, at Rouen with which, according to Lord Campbell, so unfavourable a comparison of the old palace at Westminster was being made in the time of William Rufus, it is simply the fact that no portion of that "stately structure" was completed till 1493, one hundred years *after the reconstruction* of Westminster Hall, of which it always reminds the English traveller; for the Palais de Justice at Rouen is *evidently a copy on a smaller scale* of the Westminster Hall of 1378, *certainly not the prototype of the Hall of Rufus erected in 1099*.

The Aula Regia not exclusively Westminster Hall.

the sovereign of the time being held his court,¹ there is little proof that Westminster Hall was, until at least two centuries after it was built, ordinarily used for the *Curia Regis*, or specially regarded as the regular *Aula Regia* for legal purposes.

Age of the present Westminster Hall.

The actual history of Westminster Hall shows it to have been originally designed not for a Hall of Justice, but for a banqueting hall; that it was so used for ages after it was first erected, in the time of William Rufus, that Rufus' building was destroyed and an entirely new hall built before the Courts of Law were fixed there, and that the existing Westminster Hall dates back, not to the days of William Rufus, but of Richard II.

The old Palace at Westminster.

There is no doubt that the Palace at Westminster was used as one of the royal residences in the days of Edward the Confessor, William the Conqueror, and William Rufus, and that each of these kings *wore his crown* there² alternately, with Gloucester and Winchester or Windsor at the orthodox feasts of *Christmas*, *Easter*, and *Whitsuntide*, and that such assemblies in the *Aula Regia* constituted the *Curia Regis* for the transaction of the affairs of the State and the sittings of the Justices of the Supreme Court.

The practice of shifting the royal quarters at Christmas, Easter, and Whitsuntide continued under

¹ See below.

² William the Conqueror, at Easter, A. R. 6, held his Court at Winchester, and in the *Aula Regis* there was heard the great dispute between Lanfranc and Thomas, Archbishop of York. At Whitsuntide, the *Aula Regis* was at Windsor when the same cause was heard and determined. At Christmas, 1092, William the Conqueror held his Court at Gloucester; at Easter at Winchester; Whitsuntide, London; 1093, the *Aula Regis* was at Gloucester. William the Conqueror was a very magnificent prince; he wore his crown three times a year; Easter at Winchester; Whitsuntide at Westminster; Christmas at Gloucester.

William Rufus, who at the great feasts *wore his crown* at Gloucester, Winchester, Salisbury, or Windsor, as often as at Westminster,¹ and for two centuries after Westminster Hall was built, the Curia Regis was held,² and the members of the legislature generally assembled in the *Aula Regia* of some other palace.

There is no doubt that the first erection of Westminster Hall dates back to the days of the lavish William Rufus and his reckless minister and *Summus Justiciarius*, Flambard, but it was merely an appendage to the royal palace, a costly banqueting hall,³ built with small design for its future use as a Hall of Justice, and, as it would seem, with small scruple as to the mode of defraying the cost, and we are told that the royal spendthrift told his assembled guests that this banqueting house was

First erection of Westminster Hall.

¹ William Rufus, at the beginning of his reign, *wore his crown* and held his Court in London. Christmas, 1094, at Gloucester; Easter, 1095, at Winchester; Whitsuntide at Windsor; Christmas, 1096, again at Windsor; Easter at Salisbury; when, amongst other incidents, we have the record of a trial by battle, with some sickening details of the result. Gosfrey Baintard accuses William de Ou, the King's kinsman, of treason in the King's Court, and the Saxon chronicler goes on to say "duello cum eo decertavit, eumque prælio simplici vicit, et postea superato jussit Rex oculos erui ac deinde testiculos abscindi: et illius Dapiferum Willelmum nomine, filium amitæ illius, jussit Rex in crucem tolli." Madox, Ech. c. i. p. 8, note; Saxon Chron. 1096; Hoved. pp. 1, 466. See Madox, c. i. Christmas, 1099, the King spent in Normandy, and coming to England he wore his crown in *Nova Aula* of the Palace at Westminster.

² In 1235 the *Curia Regis* sat in the abbey of Merton, when the statute of Merton, 20 Henry III., was passed, expressly stated to be made *in Curia Regis*. The Court and Parliament sat at Oxford in 1247, and 1258 at Marlebridge; in 1267, the next year, at Kenilworth; at Gloucester in 1278; at the Royal Palace in the City of London in 1311; at York in 1235, and on many subsequent occasions, certainly at other places than Westminster Hall, such as Lincoln, Northampton, Nottingham, Windsor, etc.

³ The old Chroniclers describe William Rufus' costly building operations at the Tower of London, and the Palace at Westminster as going on at the same time, and speak of the loud complaints of the way in which he *pilled and shaved* the people with tribute to raise the *wherewithal*.

intended merely as the commencement of a more costly structure.¹

The early history of Westminster Hall consists merely of accounts of the magnificent festivities and stately receptions given there by the Norman kings, who seem to have entertained, as occasion served, poor as well as rich, in a style of Oriental splendour.

Early use
of West-
minster
Hall for
festive
purposes.

Stow and Fabian furnish us with many an animated report of the festive proceedings in Westminster Hall before the lawyers appropriated it, of the feeding six thousand of the poor here by Henry III. in 1236, and the sumptuous feasting of the Pope's Legate and other grandees in 1241; ² how in 1243 a magnificent banquet was given here in honour of the marriage of the king's brother, Richard, Earl of Cornwall, and how the festivities were being kept up at Whitsuntide, 1315, when the royal banquet was disturbed by the untoward apparition, of an unwelcome, if not an unearthly visitor, with a letter of evil omen, greatly interfering with the hilarity of the evening.³

More
recent fes-
tivities in
Westmin-
ster Hall.

Westminster Hall for ages after the times we have been just referring to, and long after it had become the English Forum, and the fixed place for holding

¹ Roger of Wendover and Matthew Paris state that when the royal guests expressed their admiration of the luxurious hall, in which they were being entertained, William Rufus told them it was not big enough by one-half, and but a *chamber compared* with what he intended to erect. See also Seymour, 'London,' lib. 5, p. 627.

² Entertaining, as it is asserted, 10,000 guests, who partook of 30,000 dishes. Fabian's 'Chronicle,' 685.

³ "Whilst the King was sitting royally at the table with his peers about him, there entered a woman, adorned like a minstrel, sitting on a great horse duly caparisoned, who rode round about the tables, showing pastime, and at length came up to the King's table and laid before him a letter of complaint from his discontented knights, and then departed."—*Id. ib.*

the law Courts, continued on great occasions to maintain its original character for festivity and gorgeous display.

Here in the winter of 1398-9, after the *present Hall* had been built by William of Wykeham, a most royal Christmas was kept by Richard II., whose prodigality in entertainments, like that of William Rufus, seems to have been boundless, and whose deposition was the first public act of the Parliament assembled in the same Hall a few months after.¹ Here in 1494, Henry VII. entertained the citizens on twelfth day in right royal style,² and here for ages afterwards his successors gave grand entertainments, the last of which was at the coronation of George IV., and here twenty-seven years ago, under the auspices of Lord Brougham, was a lively assemblage of a somewhat different character.³

¹ The daily provender at Christmas, 1399, is said to have amounted to 26 oxen, 300 sheep, besides fowl without number. The King wore a gown of gold, garnished with precious stones, the concourse of people, 10,000. See Seymour's 'London,' lib. v. c. 3, 628. Richard II. seems to have rivalled William Rufus in his extravagant expenditure at Westminster Hall, and in his lawless proceedings to raise the funds for keeping it up. Shakespeare makes his enemy say,

"The Commons hath he *pilled* with grievous taxes, and lost their hearts."
—Shakespeare, Richard II.

² Fabian says, that here Henry VII., holding his royal feast of Christmas at Westminster, on the twelfth day feasted Ralph Audrey, then Mayor of London, and his brethren, the Aldermen, with other commoners in great number; and after dinner, dubbing the Mayor Knight, caused him, with his brethren, to stay and behold the disguising and other disports in the night following, showed in the great hall, which was richly hanged with arras, and staged about on both sides; which disports being ended in the morning, the King, the Queen, the ambassadors and other estates being set at a table of stone, sixty knights and esquires served sixty dishes to the King's mess, and as many to the Queen's (neither flesh or fish), and served the Mayor with twenty-four dishes to his mess of the same manner, with sundry wines in most plenteous wise, and finally the King and Queen being conveyed with great lights into the palace, the Mayor, with his company, in barges returned and came to London by break of the next day.

³ The Social Science Congress, 1856.

Disasters
of West-
minster
Hall.

Whilst Westminster Hall has so often been the scene of festivity, its disasters have been certainly frequent, and it would require much exploring now to make out even the traces of the work begun under William Rufus. According to reliable accounts, the Hall of William Rufus came to grief within eighty years after its first erection, and in 1163 when Henry II. was on the throne, we are told that the whole Palace of Westminster was ready to have fallen down "had he not directed it to be repaired and renovated."¹

Destruc-
tion of the
Hall of
William
Rufus.

In 1236 and in 1242 the Hall was inundated by floods. In 1263 and in 1299 fire seems to have destroyed all that was combustible there, and when this was remedied the place was reduced to ruins by another fire in 1386, and as we shall see again rebuilt. Though the greater part of the Old Palace of Westminster was entirely destroyed by fire in 1512, Westminster Hall escaped the conflagration, and with the offices adjoining was again put in repair.

Date of the
existing
building.

Such being the history of Westminster Hall, we may feel assured that the greater part of the present building is the work of the end of the fourteenth century, when, as appears by contracts fully recorded,² the last work of rebuilding was completed. This seems to have been carried out under the superintendence of the accomplished William of Wykeham.

Architec-
ture of
Westmin-
ster Hall.

It still retains the unmistakeable mark of his taste and skill, and the style just then introduced, which

¹ Matthew Paris says that a diligent searcher might find out the foundation of the Hall which William Rufus was supposed to have built. The date of this renovation under Henry II. was just the period when the quarrels between that monarch and his ambitious chancellor, Thomas à Becket, began.

² See Rymer, 'Fœdera,' vii. 548-794.

architects call the *perpendicular Gothic*—with the stately roof, the hammer-headed beams, and angels' heads.¹

On solemn occasions a royal feast, a state trial, a gathering of the magnates of the nation, Westminster Hall seems for all purposes (when the King held his Court at Westminster) to have been the recognised *Aula Regis*. There at the high table at the upper end of the Hall in his marble chair for a throne² sat the King at his coronation dinner, or meeting of the assembled Peers; and when the Sovereign retired from the Hall, the Chancellor took his seat in the *marble chair*, which then served, like the woolsack³ did in aftertimes, for the allotted place of honour of the great official.

Coronation
and other
feasts.

The marble
chair.

The table and marble chair at the end of Westminster Hall seem to have been removed some time in the fourteenth century, to make room for the erections there made for the Courts of Chancery and King's Bench. Old

Ancient
positions
of the
Courts of
King's
Bench and
Common
Pleas.

¹ This corresponds for the most part with the *Flamboyant* of continental architects, many examples of which are to be found in Normandy, as at Honfleur, and that which so strongly reminds the English traveller of Westminster Hall—the Palais de Justice at Rouen—a building which was first erected in 1493, one hundred years after Westminster Hall was rebuilt, and nearly four hundred after the date of the original Hall of 1099.

² At the upper end of Westminster Hall was a long marble stone of twelve feet in length and three feet in breadth, and there also was a marble chair where the Kings of England formerly sat at their coronation dinners, and at other solemn times the Lord Chancellor. This was afterwards built over by the two Courts of Chancery and King's Bench. At this marble stone divers matters of importance used to be transacted, the swearing in of high officers, etc. See Stow, lib. 5, ch. 3, 628. Henry de Cliff was so sworn as Master of the Rolls in 1325.

³ The woollsacks served in the House of Lords for seats for the Chancellor and Judges when ordinary peers were not so luxuriously accommodated. Dean Stanley, in referring to the marble chair in his admirable work on Westminster Abbey, speaks of it as the *King's Bench*, "*from which the title of the Chief Court was derived.*" ('Historical Memorials of Westminster Abbey,' ed. 4, p. 56.)

pictures show that there was a similar erection for the Common Pleas nearer the entrance of Westminster Hall ; and it is probable that the place has been generally used for holding the superior Courts ever since. Such certainly was not the rule before the fourteenth century.

CHAPTER III.

THE KING'S JUSTICES, THE COMMON BENCH, AND
THE ASSIZES.

IT is hardly necessary to remind our readers that the subject now before us extends over a long space of time, and that the Supreme Court of Judicature constituted anew by the series of statutes commencing in 1873,¹ is really founded on institutions the growth of at least seven centuries; dating back not merely to Edward I. or to Magna Charta, but to the time when regularly trained Judges were first appointed in the Aula Regia, calling to mind names and events prominent in the history of law and lawyers in this country—Henry II., Thomas à Becket, and Glanville, the Constitutions of Clarendon, the angry conflicts between Church and State, and the permanent provisions at length made for the administration of law and justice by the Judges of *the one Bench or the other*, or under circuit commissions.

It so happened that Henry II., before he became king, was actually *Summus Justiciarius Angliæ*, the only Royal Prince so appointed, and certainly *the youngest man*; for he was barely twenty-one when he ascended the throne; and he had been Chief Justiciar for twelve months before.²

Legal ex-
periences of
Henry II.

¹ 36 & 37 Vict. c. 66; 38 & 39 Vict. c. 77.

² See *ante*, p. 63.

Glanvill. It was the good fortune of Henry II. to have as his coadjutor in the work of administering law and justice the first in the list of English lawyers, Ranulphus de Glanvill. It was his fate to live in an age of ignorance and superstition, and to have as ruling minister one of the most ambitious and unscrupulous of ecclesiastics, Thomas à Becket, determined to make everything give way to the absorbing interests and the encroaching claims of the Church, to oppose all measures, legislative or administrative, which interfered with them.

Troubles of Henry II. The work of laying the foundation of our judicial system was commenced under difficult and painful circumstances. The life of Henry II. from his cradle to his grave seems to have been one of almost continual trouble and endurance. The high character given him by historians was not unmerited, and the "learned in the law" have ever held him in just esteem. To Henry II. and his coadjutors we owe not only the emancipation of the law from ecclesiastical control, but the actual foundation of our system of judicature, the appointment of legally trained Judges to administer law and justice. For three centuries after his death usages and ceremonies originating in the painful events of his time were religiously observed by the sages of the law; and we still read with interest the accounts of the solemn processions in old times of the Judges and Serjeants of the Coif, and in commemoration of the events of the reign of Henry II., their pious devotions, before assembling at the Parvise at St. Paul's, in the chapel dedicated to Thomas à Becket.¹

¹ The chapel dedicated to Thomas à Becket, or Thomas of Acres or Acons, or Thomas the Martyr, on the site of the Mercers' Chapel in Cheapside, seems to have been originally founded in the time of Henry II. by à Becket's sister soon after his death in 1190.

The meetings at *St. Thomas of Acres* and solemn processions from thence

When Henry II. was king the secular power of the Church was already on the decline, and the assumed privileges of the clergy in ordinary legal proceedings was very freely dealt with; and it was not long afterwards that the secular Courts in this country got rid of the tonsured Judge and Pleader, and the principle was fully recognised that the law of the land could be and ought to be administered without monkish aid, by the sages of the Common Law.¹

Decline of
clerical
influence.

Bishops and Abbots and others of the clergy, no doubt,

to St. Paul's on great occasions are referred to by many writers. Dugdale gives us the following account of the processions of the Judges and Serjeants, on the creation of new Serjeants:—

“And when the seid newe Serjaunts have dyned, they goo in a sober maner with ther seid offycers and servaunts into London, oone the est side of Chepesyde, one to *Seynt Thomas* of *Acons*, and ther they offer, and then come down on the west syde of Chepesyde to *Powles*, and ther offer at the Rode of the North door, at Seynt Erkenwald's shrine, and then goo down into the body of the Chirche, and ther they be appoynted to ther Pyllrys by the Styward and Countroller of the feste, which brought them thidder with the oder officers.”—Dugdale, Orig. Cap. xlv. p. 117.

These solemn observances at *St. Thomas of Acons* were not confined to the Judges and Serjeants-at-law. The new Lord Mayor of London, after being sworn in, used to meet there with the aldermen, and proceed together to St. Paul's, and after certain prayers and offerings there, to go back to St. Thomas of Acons, where, we are told, *mayor and aldermen offered each a penny*.—See Seymour's Hist. of London, lib. 2, ch. 3, p. 539. These ancient ceremonies seem to have ceased when Henry VIII. seized the possessions of the order of *St. Thomas of Acons* in 1538, and gave the chapel and adjoining property to the Mercers' Company. The Judges and Serjeants of the Coif thenceforward continued the state processions to St. Paul's, but their place of meeting was changed to Serjeants' Inn, until the operation of the Judicature Act put an end to that rendezvous.

¹ See *ante*, pp. 10 and 21, where the various constitutions and ordinances on the subject are referred to.

The beginning of the reign of Henry III. is generally referred to as the date of the ecclesiastical constitutions prohibiting clerks in orders and priests from appearing as advocates in the ordinary courts here; such constitutions being made in 1218 by Richard Poer, Bishop of Salisbury, see Dugd. Orig. 21, but the voluntary secession of the ecclesiastics from the secular courts was going on much earlier, *ante*, p. 11, *et seq.*

acted as Judges in the secular Courts here long after the time of Henry II., but we then find regular Judges who were not ecclesiastics acting as permanent *Justices* in *Curiâ Regis*, as well as *Justiciarii itinerantes* from time to time, Glanvill's name appearing in both capacities, with others of whom express mention is made.

Distinct
Benches in
Aula
Regia.

The Com-
mon Bench
of the Aula
Regia.

The Justices in the Aula Regia seem to have early formed *distinct Benches*, the "Justices of the one Bench and the other" being spoken of in records as early as the time of Henry I.: and *Communis Bancus* was the proper designation of the Bench of Justices which had to dispose of *common pleas*—actions real and personal between subject and subject, or party and party—as distinct from *placita coronæ*, which belonged to the *King's Bench*, in those days presided over by the King himself or his *locum tenens*, the *Summus Justiciarius Angliæ*.

Early dis-
tinction
between
the
Benches of
Justiciars.

This marked distinction between the two *Benches* of Justiciars in the Aula Regia may be traced back to a very early date; when records, yet existing, refer to the "Justices of the one Bench or the other,"¹ or separately to the "King's Bench"—*coram me ipso*—and the Common Bench—*coram Justiciariis meis*—and to the proceedings of the former as *placita Coronæ* or *placita Regis*,² and of the latter as *placita de Banco*.

Age of the
Court of

There is such a general concurrence of opinion as to

¹ Dugdale refers to a charter from Henry I. granting to the Abbot of B. conusance of all pleas, "so that neither the *Justices of the one Bench or of the other* should meddle," etc. Orig. Jur. ch. 18. This same expression of Justices of one Bench or the other is used in the 16 Edw. 3, statute 1, c. 16, as to holding assizes, which also speaks of the *King's Bench* and *Common Bench*.

² "Ricardus filius Aluredi Pincern debet XV. marcas argenti ut sederet cum Radulfo Burser ad placita Regis."—Record cited in Madox, Exch. ch. 2, 63.

the Court of Common Pleas having, together with its ancient rights, offices, powers, and privileges, a legal existence from time immemorial, that we need hardly say it *did not begin* with Magna Charta, or any period subsequent to the reign of Richard I.¹

Common Pleas.

Madox² quotes a number of records relating to the Common Bench in that reign, and Coke refers to others of an earlier date,³ shewing that the Court of Common Pleas was even then a separate and distinct Court, its Judges being constantly referred to as *Justiciar de Banco*, *Justices en banc*, etc., and thus known long before Magna Charta.

Old records relating to the Common Bench.

Such authorities quite refute the idea of those who speak of the Court of Common Pleas as *created in the time of Edward I.*, or originating in the clause of Magna Charta, which provided for its sittings being in *aliquo certo loco*.⁴ The words of this clause in Magna

The Court anterior to Magna Charta.

¹ Co. Litt. 71, b; Hargrave and Butler's note 30; Coke's, 4th Inst. 72, 75, 100. The old offices of Exigenter and Prothonotary, in the Common Pleas dated from time immemorial: see Vin. Abr. xviii. 110; Com. Dig. Courts, c. 4; Dyer's Reports, 150 b.; so the office of Ushery of the Common Pleas.

By the statute 3 Edw. I. c. 39, the limit of *time immemorial* was the return of Richard I. from the Holy Wars.

² XIX. Division of Courts, 789.

³ See Preface to 8 Co. Rep. 26.

⁴ Lord Campbell in his life of Hengham (Chief Justiciar temp. Henry III. and Edw. I.) says, "Magna Charta had enacted that civil actions should be tried *always sitting in the same place*, so that the suitors might not be compelled to follow the king in his migrations to the different cities in his dominions: and the section of the Aula Regis which had subsequently sat at Westminster now became the Court of Common Pleas."—'Lives of Chief Justices,' vol. i. p. 71.

In order the more to disparage the Court, the Judges, and the Coif, Lord Campbell, in his Index, distinctly refers to "its creation by Edward I." side by side with his other misleading references to the "monopoly of the Serjeants," and the "easy duties of the Judges," etc. See vol. iii. p. 365.

Charta have evidently led to a variety of mistakes with reference to the Common Pleas.

Operation
of the
clause in
Magna
Charta.

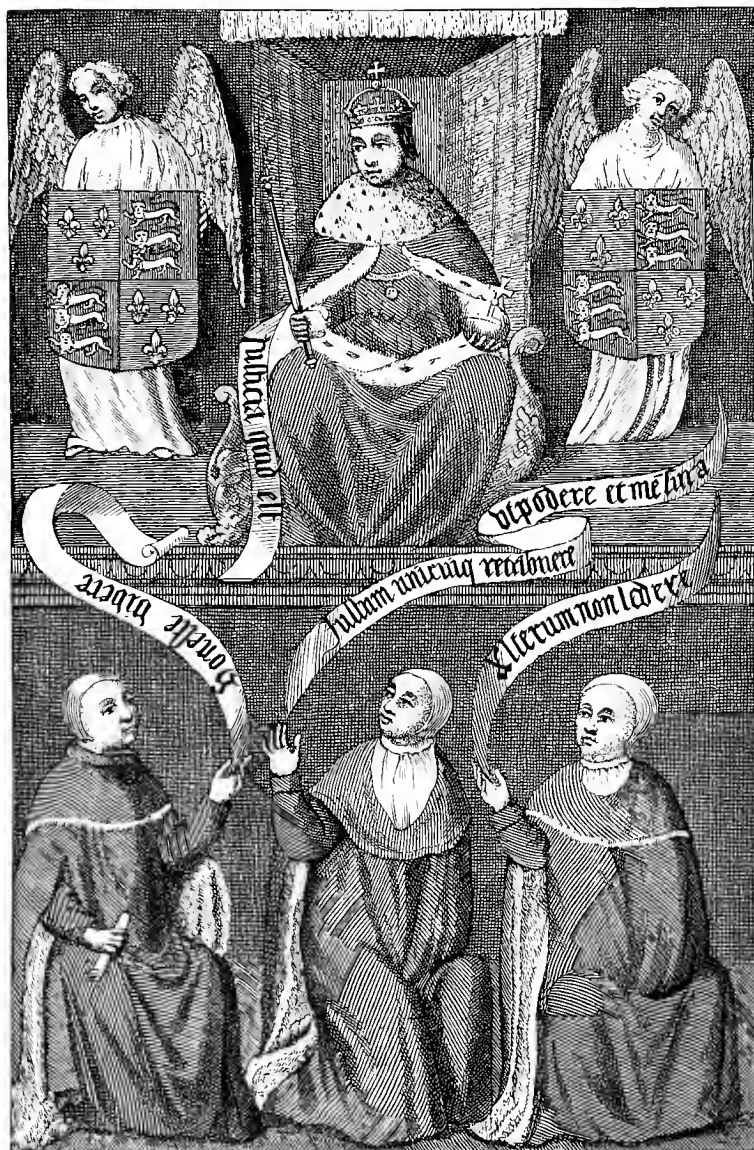
The evil which was designed to be dealt with by the clause in question, was the continual change in the place of sitting of the Courts. Incidentally no doubt it had the effect in time of bringing about the establishment at Westminster Hall of not only the Court of Common Pleas but the other Courts which grew out of the old Aula Regia, but it is free from dispute that for ages after Magna Charta, as well the Common Pleas as the King's Bench and Exchequer were held in a variety of places and were certainly not *de facto aut nomine* what in modern times they became, "H.M.'s Courts at Westminster." They were each of them in their turn held at Winchester, Gloucester, Windsor, Lincoln, or York as much as at Westminster, and neither of the places named could therefore exclusively be called the *certus locus* in which the Courts were obliged to be held.

Discretion
of the
Crown in
fixing the
place of
sitting of
the Com-
mon Pleas.

According to the best opinions it was in the discretion of the Crown to fix and appoint the *certum locum* for sittings of the Court from time to time as occasion arose,¹ and if proper arrangements were made for fixing on such place, *common pleas* might legally be heard and tried and disposed of in York Castle as well as at Westminster Hall; and the Rolls of Parliament of 1298 contain an express ordinance making arrangements for both the Common Pleas and Exchequer sittings at *York Castle*.² There are numerous records of the time of Edward III. of the proceedings both of the Courts of King's Bench

¹ "Voilloms que Justices demurrent continuellement a Westminster on ailleur."

² "Ordinatum est quod scaccarium et Bancus sint apud *Eborum* post festum sancte Trinitatis, videlicet scaccarium in crastino Trinitatis, et Bancus iufra *Castellum*."—1 Rot. Parl. 143; 26 Edw. I.



TAKEN FROM ANCIENT PAINTED TABLE IN THE KING'S EXCHEQUER, TEMP. HEN. VII.

and Common Pleas sitting at York ; and the Year-books 1334 and 1336 contain reports of cases there decided.¹

In 1364, more than a century after the date of Magna Charta, among the Parliamentary petitions is one complaining of the great inconvenience arising from the uncertainty of the sittings of the Courts, and instead of the royal assent is the surly answer that "the King would order such sittings where he pleased as should be best in ease and quiet of his people ;"² and in 1392 the sheriffs were directed to return to the *Common Pleas at the City of York*, all writs, original or judicial, made returnable in the Common Pleas at Westminster on or before the morrow of St. John the Baptist.³

Sittings of Court at York, etc.

It will thus be seen that the idea of the sittings of the Court of Common Pleas being permanently fixed at Westminster Hall by Magna Charta is altogether wrong—as inaccurate indeed as many of the tedious tales put forward in the Law Dictionaries, and afterwards dressed

Association of Court of Common Pleas with Westminster Hall.

¹ 7 Edw. III. 57 ; H. 8 Edw. III. 16, pl. 4. See also M. 1 Edw. IV. 8.

² "Inasmuch as the Bench of our Lord the King is wandering from county to county through all the realm, and in the counties in which the said Bench is, all the commons of the counties are made to come, and to remain before the Justices of the said Bench, for one cause or for another, to the great destruction and costs of the said commons, whereof the King takes little advantage ; and also many persons are thrown back (*sus dict*) defeated and destroyed for want of wise counsel, whereof they can find none in that Court by reason of the uncertainty of the place ; the Commons pray that the said Bench may remain in certain at Westminster or at York, where the Common Bench remains, that a man may have counsel of one Court or of the other, so that no man be thrown back (*sus dict*) for want of wise counsel, and by the uncertainty of the place." Answer : "The King neither will nor can renounce ordering his Bench when he shall please : but he will order thereupon in such manner as shall be best in ease and quiet of his people."—2 Rot. Parl. 20.

³ See 3 Rot. Parl. 406a. These writs are tested at Stamford, but, as observed by Mr. Serjeant Manning, it does not follow that the king was there, the usage being as a mark of honour to the Lord Chancellor to test original writs from his place of residence instead of the Royal Abode.—Notes to the Report of the Serjeants' Case, 180, note d.

up by book compilers, regardless of what is actually true or untrue, *e.g.* the story of William Rufus having built the existing Westminster Hall, and of the Law Courts having been held there ever since,¹ or the twattle of Roger North, in reference to Sir Orlando Bridgman, seriously telling his readers that that learned Judge legally objected to any structural alteration of the actual area of the old Court of Common Pleas, as a violation of the provision of Magna Charta that *communia placita teneantur in aliquo certo loco*.²

Illustration of the old Court of Common Pleas.

The illustration in the frontispiece³ represents the old Court of Common Pleas in the middle of the fifteenth century, when it usually, if not always, sat at Westminster Hall. The picture represents the Judges, then seven in number, in the full judicial costume of the senior Brothers of the Coif, whilst the coifs and the party-coloured robes of the Pleaders show them to be Serjeants-at-law of junior standing, in the robes of the day.

The Common Bench the chief

Coke describes the Court of Common Bench as "the lock and key of the common law,"⁴ and such description

¹ See *ante*, p. 81.

² "The Court, answering the title of Common Pleas, was placed next the hall door that suitors and their train might readily pass in and out, but the air of the great door when the wind is in the north, is very cold; and if it might have been done the Court had been moved into a warmer place. It was once proposed to let it in through the wall to be carried upon arches into a back room which they call the Treasury, but the Lord Chief Justice Bridgman would not agree to it, as against Magna Charta, which says that the Common Pleas shall be held *in a certain place*, with which the distance of an inch from that place is inconsistent, and all the pleas would be *coram non Judice*."—North's 'Life of Lord Keeper Guilford,' vol. i. p. 199.

³ The illustration is one of those already referred to, *ante*, p. 18. It is of especial value, not only with reference to the costume of the order, on which see *post*, ch. vii., but the constitution of the Court and the position of the Serjeant Counters, the officials, and the actual litigants.

⁴ Coke, 4 Inst. 99.

certainly can hardly be treated as careless or inappropriate. The Common Bench, the great Court for the adjudication of *Common Pleas*, had not only for each occasion to administer *common justice*, but for general guidance to lay down the rules of the *Common Law*; and it is to the decisions of the Common Bench before its jurisdiction was encroached upon by the Judges of the other Courts, that we must look back for the authentic version of those principles and doctrines, which in time came to form the actual law of real property in England. We may go further, and safely rely on the fact that there are few titles to landed estates in this country which have not, at one time or other, been based on a Common Bench record, the record of a judgment actually given in matters litigated, or of a fine levied in a suit for land settled by final concord, or of a common recovery by default.

common
law
tribunal.

We must bear in mind that in old times the only mode of proceeding for the recovery of land was by *real action*, in which the Common Bench, or Court of Common Pleas, had exclusive jurisdiction; and that in comparison with this ancient course of law, the clumsy proceedings in use for the same object by way of *ejectment*, and the ordinary formulæ of proceedings adopted before the Judicature Acts came into operation, were mere recent contrivances. The action of ejectment, which was substituted for the *real action*, and was based on a succession of fictions, seems ever since it was invented to have been the subject of animadversion on the part of the more grave of our legal authors,¹ and of ridicule on the part

Real
actions in
the Com-
mon Pleas.

The action
of eject-
ment.

¹ Coke tells us that "The neglect of assizes and real actions hath produced two inconveniences in the Commonwealth, and a third is (if not steeped on already) like to ensue: 1. The multitude of suits in personal

of humourists who revelled in the nonsense of the verbose forms of the action of ejectment, and the tedious performances of John Doe and Richard Doe.¹

The remedy by ejectment for recovering the actual possession of land in lieu of a real action appears to have been first established in the time of Edward IV.²

Legal fictions enabled all the Courts at Westminster, the Court of Exchequer as well as the King's Bench, to deal with common pleas and claims and titles to land. The exclusive jurisdiction of the Justices of the Common Bench in such cases, which³ began to give way in the reign of Edward III., was abandoned in the time of Henry VII., and from that time the Court of Common Pleas practically became only one of the three superior Courts at Westminster.

Long after the old and peculiar jurisdiction of the Common Bench had become mere matter of history the Court continued to hold ground at all events as one of the great Tribunals of Westminster Hall, especially in

actions, wherein the realty of freehold and inheritance is tried, to the intolerable charge and vexation of the subject. 2. Multiplicity of suits in one and the same case; wherein oftentimes there are divers verdicts on the one side, and divers on the other, and yet the plaintiff or defendant can come to no finite end, nor can hold the possessions in peace though it be often tried and adjudged for either party."—Coke's Pref. 8 Rep. xxvii.

¹ The absurd old action of ejectment was the easy subject of caricature by writers of legal novels. The readers of the late Mr. Samuel Warren's 'Ten Thousand a Year' will remember the form of proceeding which is set out at length in his famous action of ejectment, *Doe on the demise of Titmouse versus Aubrey*, a production designed to rival in legal absurdity the case of *Bardell v. Pickwick*, in Dickens's immortal work.

² In the Year-book 7 Edw. IV. 6, Fairfax, J., says, "si home 'port ejectione firmæ,' le plaintiff recovers son terme qui est arrere si bien come en 'quare ejecit infra terminum': et si nul soit arrere donque tout en damages."

³ See on this Reeves' 'History of the English Law,' vol. iii. p. 390, and vol. iv. p. 165.

actions relating to real property, and certainly not the least of the reasons of this high character of the Court was to be found in the learning and ability of the Bench and the Bar, always chosen from the Order of the Coif: and for the most part from those who had already gained distinction as Serjeants-at-law.

The Justices of the Common Bench were always chosen from the Serjeants-at-law. Coke, Fortescue, and Dugdale clearly establish that in the case of the Common Pleas Judges this rule existed from time immemorial,¹ and that the rule was gradually extended to all the Judges of the *Common Law* Courts at Westminster.²

Judges of
Common
Bench
always
Serjeants.

For a long time after the Conquest there were very urgent reasons for this rule being adhered to. When the Crown, or the Chief Justiciar, attempted to infringe on it by appointing to the Judicial Bench Court favourites, or those who were not "recognised *men of law*," the outcry was generally so great as to bring about reform. From the days of Edward III. to the passing of the

Special
reasons for
Judges to
be of the
order.

¹ See Coke's 4th Inst. 72, 75, 100; Com. Dig. Courts; Fortescue, De Laud Angl. c. 50; and argument of Sir William Follett in "the Serjeants' Case" reported by Serjeant Manning, p. 73. The legal necessity of all the Judges at the assizes being Serjeants-at-law arose from the statutes quoted, *ante*, p. 4, which provided that assizes might be taken before *the Justices of the one Bench or the other or Serjeant le Roi juree*.

² As late as Coke's time the *Barons of the Exchequer*, with the exception of the Chief, were of inferior grade to the Judges of the one Bench and the other, inasmuch as they were *not of the Coif*. Coke refers to this in speaking of the legitimate position of Serjeants-at-law, in his preface to the 10th Report, where he says: "Of these Serjeants, as of the seminary of Justice, are chosen Judges; for none can be a Judge, either of the Court of King's Bench, or of the Common Pleas, or Chief Baron of the Exchequer, unless he be a Serjeant; neither can he be of either of the *Serjeants Inns*, unless he hath been a Serjeant-at-law; for it is not called Judges or Justices Inn, but Serjeants Inn; for I have known Barons of the Exchequer (that were not of the Coif, and yet had judicial places and voices) remain in the houses of Court whereof they were fellows, and wore the habit of apprentices of the law."—xxiv.

Judicature Acts the law had been respected—even when the selected Judge was only created a Serjeant-at-law immediately before he was called to the Bench;¹ and so distinctly was the rule deemed a part of the constitutional law of this country that it was most carefully observed even during the Commonwealth,² and never legally altered previous to the provisions of the Judicature Act, made apparently to meet merely an exceptional state of things and not altogether to alter the old law.³

Ancient
constitution
of the
Common
Bench.

The precise constitution of the *Common Bench* of the Aula Regia does not distinctly appear, but Dugdale gives us lists in the time of Richard I. of Justices in Curia Regis *apud Westminster*, before whom fines were levied.⁴ When the regular sittings of the Court at Westminster Hall had been fixed, the work of the Judges seems to have much increased. A Chief Justice was appointed in 1274,⁵ and in 1310 the number of the Justices was increased to six (two Courts sitting at the same time⁶), was again increased in 1313, a seventh Judge being appointed; and in the succeeding reign, that of Edward III., the number of Judges varied—sometimes as many as nine being appointed, sometimes seven.⁷ For nearly

¹ See on this, *post*, ch. viii.

² See *ante*, p. 40, and address to the new Serjeants called 18th November, 1648.—Whitelock's Memoir, 356.

³ No person appointed a Judge of either of the said Courts shall henceforth be required to take or to have taken the *degree* of Serjeant-at-law, 36 & 37 Vict. c. 66, s. 8. The alleged reason for this clause was that otherwise all the Equity Judges would at once have had to be made Serjeants-at-law.

⁴ Orig. Jur. Chron. series, suban. 1196.

⁵ Gilbert de Preston, Dugd. Chron. 1274, of whom see Foss, Dictionary, p. 537.

⁶ "Et covient que taunz y soient, pur ceo q'il covent aver deus places pour le multitude des plez, que plus est ore que unques ne fust en nuly temps." Claus 3, Ed. 2, in dorso m. 21, cited in Dugd. Orig. 39.

⁷ Dugd. Orig. 39.

a century afterwards the number of the Common Bench Judges was five, but in the time of Henry VI. there was again a more numerous Bench of Justices, the number in that reign and the next varying from five or six to seven or eight; and the salaries of the Justices seem to have varied very much, probably depending on the increase or decrease of business, the Chief Justice of the Common Pleas in 1362 and for a long time afterwards being allowed double the amount of the salary paid to the Chief Justice of the King's Bench.¹

In the picture in the frontispiece of the Court of Common Pleas in the time of Henry VI. it will be seen there are seven Judges on the Bench.²

The sittings of the Courts, in the age we have been just referring to, were not of long duration, generally occupying about three hours, the Courts not being open in the afternoon, the Judges usually sitting from eight in the morning till eleven; thus carefully attending to the injunctions against keeping their Courts open at unlawful hours,³ whilst the suitors were left free to get timely counsel⁴ and the Judges to improve the occasion by innocent mental relaxation.⁵

Time of sitting.

¹ In 1279 the salary of Thomas de Weyland, Chief Justice of the Common Pleas, was only £40 per annum, and the other Justices there 40 marks. This continued in proportion in both Benches till 1362, 25 Edw. III., when the salary of the Chief Justice of the King's Bench fell to 50 marks, while that of the Chief of the Common Pleas was raised to 100 marks. Dugd. Orig. 204.

² Sometimes one of the Judges of the Common Bench was appointed to act as Chief Baron of the Exchequer, performing the duties of both offices. This was the case with John Iryn or Ireyn in 1423. Acts Privy Council, 111, 71.

³ As to the *Horæ Juridicæ*, see 1 Coke's Inst. 135 a, 2nd Inst. 264, 5. "It is an abuse that pleas are holden upon Sundays, or other days forbidden, or before sun-rising, or in the night time."—'Mirror of Justices,' c. v. § 1, art. 3.

⁴ "The suitors of the Court betake themselves to the *Perrise* to advise with the *Serjeants-at-law* and other their counsel about their affairs."—Fortescue, De Laud. Leg. Angl. c. li. p. 120.

⁵ "The Judges when they have taken their refreshments spend the

The advantage of the old Common Pleas Bar.

The Common Pleas Bar, thus constituted, formed from the first an institution not only based on sound principle but practically unobjectionable. So far as it was exclusive, it really accorded with usages always deemed conducive to the general good—those which helped every one fairly to secure the most effective aid in every emergency. The rule which confined the advocate's work in the Common Pleas to those of the rank and degree of the Coif, was certainly no more unreasonable than the excluding altogether from the ordinary practice of the law all persons not duly called to the Bar, or admitted as solicitors;¹ or confining the practice on circuit or at sessions to those specially from the Circuit or Sessions Bar; or those other regulations of a necessarily restrictive character made by the Bar, or the leading members practising only in particular Courts, with the view not merely to their own convenience, for the practice has been well proved to operate *pro bono publico*.

Report of the Common Law

The Common Law Commissioners very distinctly pointed this out in their report in 1834, where it is

rest of the day in the study of the laws, reading of the Holy Scriptures, and other innocent amusements at their pleasure. It seems rather a life of contemplation than of much action. Their time is spent in this manner free from care and worldly avocations."—*Fort. De Laud. c. li. p. 121.*

¹ See 6 & 7 Vict. c. 73. A species of monopoly—conducive to the interests of the Bar as well as the public—exists in the Circuit system, which confines Barristers to one Circuit, and excludes from practice all who are not duly admitted members, or specially retained. Rules of a similar character apply to Quarter Sessions, and it is not a very long time since, in some Courts of Quarter Sessions, this "Bar monopoly," if it can be so called, was first established. Lord Campbell took great credit to himself for establishing the Bar monopoly at the Monmouthshire Quarter Sessions, soon after he joined the Oxford Circuit. [See his own statement *arguendo* in the *Serjeants' Case*. Manning's Report, p. 125], and there are many instances of such exclusive audience being established in more recent times, *e.g.*, in Cornwall, in Wales, at Oxford, etc. See Manning, *ubi sup.*

stated that the privilege so enjoyed by the Serjeants was in every way unobjectionable: the public being protected from the evils which attend monopoly, whilst the advantage of a distinct Bar in the Court of Common Pleas was secured—avoiding the inconvenience of the attention of Counsel being distracted with engagements in two places at the same time, thereby causing many disasters and much disappointment, and cost of time and money.

Commis-
sioners.

No writer on legal subjects, with one single exception, ever suggested a doubt as to the immemorial existence of the practice of the Common Pleas, and of the privileges of the Serjeants-at-law—the legitimate Bar of the Court—the ancient Bar of England. Lord Campbell however, in one of his biographical volumes, goes out of his way distinctly to assert that the Serjeants-at-law unwarrantably obtained their MONOPOLY in the Common Pleas in the time of Edward I.¹

In 1775 a Chief Judge of the Common Pleas, not perhaps of the highest stamp, and with a lurking feeling of enmity to the Serjeants-at-law who practised before him, projected a scheme for taking away their privileges by Act of Parliament, and seems actually to have prepared a bill for the purpose, studiously concealing his scheme from the Serjeants. The rest of the Judges

Attacks on
the old
privileges
of the
Serjeants.

¹ In the life of Ralph de Hengham, a Judge of the time of Edward I., Lord Campbell, after making a variety of misstatements, to which attention has already been directed (see *ante*, p. 10, note 3), adds in a note the following: "It was to conceal the want of the clerical tonsure that the Serjeants-at-law, who soon monopolised the practice of the Court of Common Pleas, adopted the coif, or black velvet cap, which became the badge of their order."—"Lives of Chief Justices," vol. i. p. 72. As Lord Campbell had in the 'Serjeants' Case' in 1834 (see *post*, p. 105) such ample refutation of his misrepresentations respecting the Order of the Coif, it is, to say the least of it, *remarkable* that he should have adhered to them in his book published afterwards.

at Westminster Hall set their faces against the proposed change, and the bill was withdrawn from public attention.¹

Royal mandate, April 1834.

In 1834 there was a very remarkable proceeding on the part of the then law officers of the Crown. An attempt was suddenly made to alter the ancient constitution of the Court of Common Pleas by a Royal mandate under the sign manual,² dated 24th April, 1834,

¹ Sir John Willes was Chief Justice of the Common Pleas from 1737 to 1762, during the whole of which time he appears, according to Mr. Foss, to have been hankering after the great seal (see Foss, 'Judges of England,' p. 738). Long under the patronage of Sir Robert Walpole, he had the benefit of that politician's favour. Obtaining very early the appointment of one of the *King's Counsel*, then getting a seat in Parliament and a Welsh Judgeship, he obtained as a reward for his party services in Parliament (the defence of the Septennial Bill), the place of Attorney-General, and thus he became *Chief Justice of the Common Pleas*. Sir John Willes, even according to the account of his friend Horace Walpole, seems not to have been of a very high moral character. See Walpole's Mem., vol. i. p. 77, and there is ample evidence of his tricky schemes and intrigues to get advancement and obtain advantages for himself at the cost of others. See Harris' 'Life of Lord Hardwicke,' vol. iii. p. 139.

² This document was dated 24th April, 1834, having the King's sign manual, but neither seal or official signet of any kind, and it was the next day sent through the Lord Chancellor to the Chief and other Judges of the Court of Common Pleas, and the succeeding day, 25th April, openly read in open Court and then entered of record. The form was as follows:—

"WILLIAM R.

"Whereas it hath been represented to us, that it would tend to the general dispatch of the business now pending in our several Courts of Common Law at Westminster, if the rights of counsel to practise, plead, and to be heard, extended equally to all the said Courts; but such object cannot be effected so long as the *Serjeants-at-law* have the exclusive privilege of practising, pleading, and audience, during term time in our Court of Common Pleas at Westminster: We do therefore hereby order and direct that the right of practising, pleading, and audience in our Court of Common Pleas, during term time, shall upon and from the first day of Trinity Term now next ensuing, cease to be exercised exclusively by the *Serjeants-at-law*, and that upon and from that day Our counsel learned in the Law and all other Barristers-at-Law shall and may according to their respective rank and seniority, have and exercise equal right and privilege of practising, pleading, and audience in the said Court of Common Pleas at Westminster

and addressed to the Lord Chancellor,¹ and by him next day (25th) delivered to the Chief and other Justices of

with the Serjeants-at-Law: And We do hereby will and require you to signify to Sir Nicolas Conyngham Tindal, Knight, our Chief Justice, and his companions, Justices of our said Court of Common Pleas, this our royal will and pleasure requiring them to make proper rules and orders of the said Court, and to do whatever may be necessary to carry out this our purpose into effect.

“And whereas We are graciously pleased, as a mark of our royal favour, to confer upon the Serjeants-at-Law, hereinafter named, being Serjeants of this present time in actual practice in Our said Court of Common Pleas some permanent rank and place in all Our Courts of Law and Equity: We do hereby further order and direct that Vetrivius Lawes, Thomas D'Oyley, Thomas Peake, William St. Julian Arabin, John Adams, Thomas Andrews, Henry Storke, Ebenezer Ludlow, John Scriven, Henry John Stephen, Charles Carpenter Bompas, Edward Goulburn, George Heath, John Taylor Coleridge, and Thomss Noon Talfourd, Serjeants-at-Law, shall, from henceforth, according to their respective seniority amongst themselves, have rank, place, and audience, in all our Courts of Law and Equity, next after John Balguy, Esq.,* one of our Counsel learned in the Law. And We do hereby will and require you, not only to cause this our direction to be observed in our Court of Chancery, but also to signify to the Judges of our several other Courts at Westminster that it is our express pleasure that the same course be observed in all our said Courts. Given at Our Court of St. James, this 24th day of April, in the fourth year of our reign.

“To the Right Honourable

HENRY LORD BROUGHAM and VAUX,
Lord Chancellor of Great Britain.”

¹ At this time Brougham was Lord Chancellor and Campbell Attorney-General, the latter having lost his seat in Parliament after attaining the position of Attorney-General in rather an unusual way. Whilst Sir John Campbell was Attorney-General, there were several strange deviations from the ordinary course of business, with respect to legislative projects left to the superintendence of the law officers of the Crown. On 26th March, 1834, a bill was brought into the House of Lords having nothing to do with the Serjeants-at-law or the Court of Common Pleas—the Bill for the Central Criminal Court. There was afterwards introduced into this bill in a very strange manner a clause *for opening the Court of Common Pleas*, which was really never discussed in the House of Lords, and indeed appears not to have been even printed, but to have been mysteriously withdrawn from the engrossment before the bill was sent to the Commons.—Manning's Report of the Serjeants' Case, 175, appendix.

* Mr. Balguy had his patent as one of the King's Counsel in Trinity Term 1833, and was the then last on the list.

the Common Pleas, and immediately read in open Court and for the time acted on, viz., from Easter Term 1834, when the mandate was first received,¹ to Michaelmas Term 1839, when the same having, after full consideration, been held to be invalid,² the Judges of the Court of Common Pleas reverted to the ancient practice of giving exclusive audience to the Serjeants-at-Law.³

Bills for
regulating
the Com-
mon Pleas'
practice in
1839.

Several attempts were afterwards made by Lord Cottenham, Lord Langdale and other judicious law reformers, to deal with the difficulties which thus arose as to the leading Counsel practising in the Court of Common Pleas, and to provide by legislation such a remedy as would not be destructive of the ancient order, but prevent their privileges practically interfering with useful reforms in legal procedure.⁴

The Assizes
and
Circuits.

The Judges of the "one Bench or the other" (*the Court of King's Bench or Common Pleas*) could at no time have had so much work to dispose of when actually sitting *in Banco* as when performing the work of the *Justiciarii Itinerantes*, or sitting at *Nisi Prius*.

Arduous
labours of
the Judges.

Those who were appointed, to make their *iter*, or, to use the old expression, to *ride the Circuit*, had the

¹ See 4 Moore and Scotts' Reports, p. 465, and 3 Nevile and Manning's Reports, p. 535.

² See the decision announced by Chief Justice Tindal on 21st January, 1840, reported in Manning's 'Serviens ad Legem,' 329.

³ The various proceedings that took place with reference to this mandate are reported in *Mr. Serjeant Manning's* 'Serviens ad Legem,' a report of proceedings before the Judicial Committee of the Privy Council and in the Common Pleas in relation to a warrant for the suppression of the ancient privileges of the Serjeants-at-law, with explanatory documents and notes. Longman & Co. 1840.

⁴ Lord Cottenham's Bill, which passed the House of Lords in 1839, whilst it gave to all the Bar free right to appear in the Common Pleas in *New Trial* cases, preserved for the most part the ancient privileges of the Coif; but the law officers of the Crown seem to have discouraged these measures, and they fell to the ground.

most serious labours of the Judicature to perform. The itinera extending to every assize town in the kingdom, must, when travelling was accompanied with so many difficulties and dangers, have generally been a serious undertaking,¹ and the responsibility of the Judge on whose personal ruling the trial was inevitably dependent, was necessarily greater than when he was sitting in Banco with other Judges.

To effectually carry out the principle of bringing home justice to every man's own door—to secure the due administration of the law *in itinere* as on the *one Bench* or *the other* it was a sine quâ non that the circuit judges should be appointed from the ordinary judicial staff or from the old and recognised order of Lawyers, the Serjeants of the Coif: and until a comparatively modern time the circuit commission could not be opened, the assizes taken, the nisi prius causes tried, or the judicial business performed without the Judges assigned were *Justices del un Banc ou del autre ou Serjeant le Roy jurree*; ² and from the first institution of Circuit Judges

The legal qualifications required.

¹ Chief Justice Dyer, addressing the newly created Serjeants in 1579, advises them "to be discreet, to ride with six horses and their sumpter on long journeys, to wear their habit most commonly in all places at good assemblies, and to ride in a short gown."—Order for making of new Serjeants created and made in an. 19 & 20 Eliz., Dugdale's Orig. 119.

² *Ante*, pp. 39, 40. The words of the 14 Edw. III. c. 16, are, "S'il averque qe nul des Justices del un Bank ne del autre ne puisse vener en pais la ou enquestes et jurrees sont aprendre adonques soit le Nisi Prius grante devant le Chief Baron del Exchequer s'il soit homme de ley et eit am tieu' poair come les Justices del un Bank ou del autre ont par cest estatut. Et en cas qe nul des Justices del un Bank ne del autre ne le Chief Baron del Exchequer qi soit homme de lei ne vienne en pais ou les enquestes et jurree sont ou serront aprendre par le Nisi Prius adonq soit le Nisi Prius grante devant Justices assignes a les assizes prendre en celle parties issiut toutes foitz qe un des ditz Justices assignez soit Justici del un Bank ou del autre on Serjant le Roy jurree et que mesmes les Justioes, antien pois come devants e'est del des Justices del un Bank et del autre.—14 Edw. III. c. 16.

—the *Justiciarii itinerantes* under the law reforms of Henry II., and the Commissioners of Assize, Nisi Prius, Oyer and Terminer, etc., regulated by subsequent statutes, the services of the Serjeants-at-law were always called in to act in aid or substitution of the ordinary Judges. Chaucer's oft-quoted lines about the Serjeant-at-law being Justice of Assize,¹ shows that such was the usual practice in his time; and our old poet was able to speak with accuracy, for he was actually a member of the Inner Temple in 1340. Some of the circuit commissions seem to have had no other names in the *quorum* except Serjeants, who on such occasions were the only Justices of Assize.²

Notwithstanding all the innovations made in our judicial system by the Judicature Acts, they have not really abolished either the Order of the Coif, or the qualifications of Serjeants-at-law to be appointed ordinary Judges or Justices of Assize. The names of Serjeants-at-law are still to be placed in the assize commissions, as in ancient times, when the law required the *Quorum* in the assize commissions to be constituted of members of the Coif; and on a very recent occasion it was found most convenient for the public service, under

¹ "Justice he was ful often in assise;
By patent, and by pleine commissiun."

'Canterbury Tales,' quoted, *ante*, p. 3.

² The *Chronica* series of Dugdale affords ample evidence of this, *e.g.* in 1310 the only Judges of Assize spoken of are Roger de Scotre and Edmundus Passelegh, *Servientes ad legem*, and not long after one of the order, who is designated by Coke as "a man of singular judgment in the laws of the realm," appears for many years successively as Judge of Assize, with no other qualification than that of *Serviens ad legem*. Robert de Thorpe, the Serjeant referred to, became Chief Justice of the Common Pleas in 1356 and Lord Chancellor in 1371, but for many years before he had a seat on the Bench at Westminster Hall he was Judge of Assize.

an unlooked for emergency, to specially appoint a Judge of Assize whose personal qualifications and position eminently fitted him for the appointment, but who derived his legal qualification for the appointment from his being a Serjeant-at-law.¹

The business of the Serjeants-at-law on the circuits was of course not confined to their work of assisting in a judicial capacity. Standing as they did for so many ages as the leaders of the Bar, their duties as advocates fully compensated them for their arduous and costly labours. Even up to the early days of the writer of this work, not only was there on nearly every one of the circuits a Serjeant-at-law indisputably the leader, but one whose services were estimated at a higher rate than the most famous of the ordinary leaders of the Bar.² Changes, however, have indisputably taken place, and we must be content with the change, for better or for worse—*tempora mutantur, nos et mutamur in illis*.

Province of
the ser-
jeants on
circuit.

Serjeant Wilde, who Lord Tenterden spoke of as having industry enough to succeed without talent and talent “enough to succeed without industry,” was not the only learned Brother of the Coif who in modern times led his circuit, and was the great card to get. We need only

¹ In this case, that of Sir John Mellor, already referred to, *ante*, p. 39, it will be seen that the appointment of Judge of Assize was made from those who had retired from the Bench, had ceased of course to be Queen's Counsel, but legally remained Serjeants-at-law.

² In 1834, when the case of *Small v. Attwood* was pending, and Sir Edward Sugden, the retained leader in that famous case, returned his brief on being made Lord Chancellor of Ireland, Serjeant Wilde was after some negotiation engaged as leader in his place. The careful clerk of this famous Serjeant, finding that an engagement in the case would preclude his attending circuit, returned his brief, marked with the handsome fee proposed to be given to Sir Edward Sugden, explaining that it could not be accepted without detriment to the Serjeant's position on circuit, and with the full concurrence of all concerned, the fee was increased accordingly.

mention the late Serjeant Byles, Serjeant Shee, Serjeant Talfourd, Serjeant Wilkins and Serjeant Parry; and Serjeant Ballantine, who is still amongst us, to call to mind names not likely to be forgotten on their several circuits or in the Law Courts, or in the legal world.

CHAPTER IV.

DE ATTORNATIS ET APPRENTICIIS.

ATTACHED to the Parliament Roll of 1292 is an ordinance with the above heading, directing the Justices of the Common Bench to select a certain number from every county *de melioribus et dignioribus et libentius addiscentibus*, as they might deem most suitable for the public advantage and the service of the King's Court, to attend to the business there, to the exclusion of all others; the King and his Council suggesting the number of *seven score* of such persons; but giving the Justices power to increase or diminish the number at their discretion.¹

Ordinance
of 20
Edw. I.

Attornati et apprenticii are here dealt with, if not as altogether forming one class, at least as forming one single subject for legal regulation; the *attornati* being placed foremost. We shall see how, in the course of time,

Attorneys
and ap-
prentices
dealt with
as one
class.

¹ "De attornatis et apprenticiis Dominus Rex injunxit I. de Mettingham et sociis suis, quod ipsi, per eorum discretionem, provideant et ordinent certum numerum de quolibet comitatu, de melioribus et dignioribus et libentius addiscentibus, secundum quod intellexerint, quod curiæ suæ et populo de regno melius valere poterit et majus commodi fuerit; et quod ipsi, quos ad hoc elegerint, curiam sequantur, et se de negotiis in eâdam curiâ intromittant et alii non. Et videtur Regi, et ejus concilio, quod septies viginti sufficere poterint; apponant tamen præfati justiciarii plures, si viderint esse faciendum, vel numerum anticipent. Et de aliis remanentibus, fiat, per discretionem eorundem Justiciariorum," etc.—
1 Rot. Parl. 84.

the attorneys and apprentices of the law came to form two very distinct classes, the class of *apprenticii ad legem* coming first, and gradually embracing not only the learners but the *learned*, the *sages gentz*, the counsellors, the *apprenticii ad Barros*, who constituted with the older order of the Serjeants, the *Bar*, whilst the *attornati* came to occupy a prominent place for many ages subordinate to the Bar, and, governed by no system of regulation, except those which from time to time special statutes, or the *regulæ generales* of the Judges, prescribed. We have to consider these various regulations as they gradually came into operation, reversing the order adopted in the ordinance, and giving the first place to the *apprentices of the law*.

The apprentice of the law not previously a recognised practitioner.

The ordinance de attornatis et apprenticiis seems to be the first authentic notice of the *apprentices of the law*, as legal practitioners. What the class then consisted of it is of course not easy now to say. The date of the precept is long before the institution of the Inns of Court, and it may be that by the "apprentices" were meant the advanced students or learners of the law who, as pupils or assistants of the Serjeants of the Coif, had obtained an insight into practice, and perhaps also there were included the more irregular *followers* of the law—the dilettante practitioners and *Cleri Causidici*, already referred to as continuing to follow the law in the secular Courts in spite of repeated prohibitions and objections.¹

Institution of apprenticeship.

At the time of the publication of the ordinance relating to the apprentices of the law, apprenticeship was becoming an indispensable qualification for nearly every

¹ The prohibitions against the clergy practising as advocates in the Secular Courts date back to 1164; but it was more than a century before these irregular practitioners were got rid of. See *ante*, p. 10.

calling, and the guilds and trade associations in every city and town were gradually prescribing rules for enforcing the system. We shall see how the Lawyers' guilds or societies in their *hostels* or *Inns* acted on the principle of the guilds of traders in keeping up a sort of monopoly, and shutting out intruders by very restrictive rules as to admission and the duration of the legal apprenticeship; how the ancient usage of seven years' term of apprenticeship was strained in the case of the apprentices of the law, so as to make the required period at least twice, and in some instances thrice, as long as the more ancient custom prescribed; how many years it took before the *apprenticius ad legem* became the *apprenticius ad Barros*,¹ how many years before the latter could be elected Reader, and what were the rules as to the *Readers* and *Double Readers* whose *lucubrationes viginti annorum* at last made them eligible to be created Serjeants-at-law and Judges.

Restrictive
rules.

¹ See on this subject a note by Selden to c. 8 of Fortescue (*de laudibus*), p. 15, note (2), where he quotes the following lines from an old copy of Horne, 'Mirror of Justices,' in the library of Corpus Cantab.:—

"Hanc legum summam, si quis vult mera tueri,
Perlegat, et sapiens si vult orator haberi,
Hoc apprenticiis ad Barros ebore munus
Gradum juridicis utile mittit opus.
Horn mihi cognomen, Andreas est mihi nomen."

These lines certainly tend to make both the writer and the apprentices ad *barros* appear ridiculous. The graduating among the apprentices in the *Hostels* was, according to Coke (Preface to 3rd Report) and Dugdale (Orig. 144), very slow. The Tyros after about *eight* years' continuance as mootmen (three of such years attending exercises in the Hall) were *eligible* to be included in the annual call of Utter Barristers, who had still to wait three years before they could presume to appear at the Bar in Westminster Hall (Dugdale, Orig. 318). Only Utter Barristers of twelve years' standing were eligible to be Benchers; and these, when of ten years' standing, might be chosen Readers and Double Readers, from which latter class alone the Attorney-General and the Law Officers of the Crown and the Serjeants-at-law were selected.—Dugdale, 320, 321.

The class
of appren-
tices of the
law.

The apprentices of the law were no doubt a well-known class long before the existence of the Lawyers' *Hostels*, and obviously before the time of the Ordinance de Attornatis et Apprenticiis, but they were probably regarded rather as tyros than experts, *non eruditi sed studentes*,¹ and are so mentioned in the ancient record of Thavies Inn, which Coke was in the habit of referring to;² and quite in conformity with this we find the apprentices *en hostels* for many ages after the institution of the Inns of Court looked upon, not as qualified legal practitioners, but as learners, confining their practice to the scholastic meetings and exercises in the Hall of their *Inn*.³

Recogni-
tion of
legal prac-
titioners.

The apprentices of the law are nowhere recognised or expressly referred to in our statute book as authorized legal practitioners, like the Serjeants-at-law or the Attorneys-at-law or the modern "*Barristers*" and *Solicitors*. Apprentices of the law were in time held

¹ In Barrington's 'Observations on the Ancient Statutes,' p. 311, *apprentice en ley* is pedantically said to be a corruption of *appris en ley*. We have before had occasion to remark on other conceits of the Honourable Daines Barrington, see *ante*, p. 29, and it is hardly necessary to discuss this attempt to make *apprentice* pass for *appris*. As to the various kinds of legal apprentices, see further, *post*, p. 116.

² The will of John Tavye is recorded in the Court of Hustings, in the City of London, in 1249, where the property devised is called "*illud hospitium in quo apprenticii ad legem habitare solebant*." In Coke's Preface to 10th Report he cites this will to shew how long the place had been an *Inn* for law students.

An amusing writer of the seventeenth century—Sir George Buc—tells us how Lord Coke shewed him the transcript in his possession of the will of the honest citizen and armourer of the time of Edward III., grandly describing his *Inn* in Holborn as the place then occupied by the apprentices or students of the law.—Sir George Buc in Howes, p. 1074, ed. 1631.

³ In a case in the Year books under date of 11 Edw. II., 1318, we find on an exception taken at the Bar of the Common Bench, Ingleby, one of the Serjeants, he was answered by two others, Wille and Skypwith, that such an exception had never been taken there, but that they heard it oftentimes entres les apprentices en hostels.—Year-book, Edw. II.

to come within the very general words used in the old statute relating to malpractice,¹ and the words *sages gentz*² in the statutes relating to champerty and maintenance of suits passed a few years after the ordinance *de attornatis et apprenticiis*, but there is small ground for assuming that apprentices of the law formed a regular class of practitioners in 1300; nor any cause, or justification, for taking literally Fabian's statement, carelessly quoted by Dugdale and others, about the ordinance of Edward III.³ requiring the *Serjeants and Prentyses at law to plead their pleas in their mother tongue*. In Fabian's version of the ordinance was a translation of the word "pledours" in the ordinance of 1362, into the word *prentyses*, the word in common use when Fabian wrote.

Though it is thus very clear that the term *apprentice* was in the legal profession, as in other cases, originally used to designate *learners*, and that such was its legitimate meaning when the Inns of Court and Chancery were first established, yet no long time afterwards we find the more advanced and distinguished apprentices of the law forming a class of themselves, fully recognised at Westminster Hall and by the Legislature.

Gradual changes among the apprentices of the law.

The institution of the Inns of Court⁴ tended altogether

Effect of the Hostels

¹ If any *Serjeant Counter or other* do deceit or collusion, he shall be imprisoned for a year and a day, and never after be heard to plead.
3 Edw. I. c. 29.

² "*Nest mie a entendre qe home ne poet aver conseil de Contours et des sages gentz pur son donant.*" 28 Edw. I. c. 11. Coke says that the provisions of this Act extended to apprentices of the law (when they came to act as Counsellors), but this cannot in any way be quoted to shew that the apprentices of the law acted as Counsellors in 1300.

³ The Statute 36 Edw. III. c. 15, speaks of *Serjeants et autres pledours*, and Fabian, who wrote two centuries afterwards, when it was the fashion to call all pleaders learned apprentices of the law, so designates the pledours of his time.

⁴ See next chapter.

of Inns of
Court, etc.

to raise the position of the *apprenticii ad legem*, who towards the end of the fourteenth century appear to have become a body of considerable importance, the great *apprentice at law* ranking next after the *Serjeant-at-law*, the apprentices being divided into three classes:—(1) the great apprentices of the law, or *nobiliores*; (2) other apprentices following the law; and (3) apprentices of less estate, and attorneys.¹

Various
grades of
apprentices
of the law.

And this classification of the apprentices of the law seems to have been well known in the fifteenth century. Selden's explanation of the expressions "*grandes apprenticii*" and "*apprenticii nobiliores*" is that they were the members of the higher Inns—the Inns of Court as distinguished from those of the Inns of Chancery.² These *apprenticii nobiliores* seem to have long enjoyed special distinction in the City of London, one of the sacred books of the Guildhall, *Liber Albus*,³ laying it down that the Recorder of the City of London should be, and of usage has been, one of the *most skilful and most virtuous apprentices at law* in the whole kingdom;⁴ and the high position of these apprentices of the law seems to have subjected them to the special dislike and outrage of the lawless mob in times of civil disorder.⁵

¹ See 3 Rot. Parl. 58, 1379, where there is an entry of a subsidy granted, with an assessment of the legal profession classified as follows:

			<i>s.</i>	<i>d.</i>
Every Serjeant and great apprentice at law	.	.	each	40
Other apprentices who follow the law	.	.	"	20
Also all the other apprentices of less estate, and				
Attorneys	.	.	"	6 8

—3 Rot. Parl. 58, 1379.

² Note (c) to Forteseue, de l. d. e. xlix. 111.

³ *Liber Albus*, by Riley, 38.

⁴ See *post*, p. 117, n. 4.

⁵ The words of the old writer, Thomas of Walsingham, in describing the attack of the rebels on the Inner Temple in 1381, were "*etiam locum qui vocatur Temple Bar, in quo apprenticii juris morabantur nobiliores irruerunt.*"

Dugdale speaks of the apprentices of the law as if the term then always meant a pleader.¹ However this may be, it is clear that it had such a meaning in the fifteenth century, if not before,² and that "learned apprentices of the law" was then used to designate some of the most distinguished men of law; certain it is that the term "apprentice of the law" during the fifteenth century had acquired a meaning different from that which before belonged to it. To be a "learned apprentice of the law" was to occupy a very important position, and we find the expressions *most learned*, *most famous*, or *most skilful*, or *most virtuous* apprentices of the law, applied to distinguished members of the profession not only whilst in actual practice, but on being raised to the Bench, or taking the coif,³ or holding important offices, such as Recorder of London,⁴ or the King's Attorney-General.⁵

Appren-
tices as
legal prac-
titioners.

¹ The word *apprentice* doth signify a pleader only; as it doth also (I think) in Mich. 2 H. 6, fol 5a, where it is said, "Une apprentice vient en la Commune Banke."—Orig. c. 55, p. 143. Dugdale's authority on this subject will hardly weigh against Selden, already quoted.

² In 5 Rich II., 1381, the Commons pray that two justices, two Serjeants, and four *apprentices at law*, be appointed to inquire into grievances from delays in law, etc. (*d*), and at the same Parliament it was ordered that "as well the Clerks in Chancery of the two principal degrees (*e*), justices and Serjeants, and all the barons and great officers of the Exchequer, and also certain persons of the best apprentices of the law, shall be charged by their allegiance and by oath, each degree by itself to advise themselves diligently of the abuses, wrongs, and defaults, etc., done or used in their respective 'places,' and in the King's Courts, and also in the Courts of other lords throughout the realm, etc. (*f*).

³ In 1416—4 Hen. V.—Serjeants' Inn, Chancery Lane, was demised under the name of Farringdon Inn, Chancellors' Lane to *Rogero Horton et Will., Cheyne Just, et Walter Ashham, apprentices legis*, though they were all Serjeants-at-law. See Dugdale's chron. ser. 57.

⁴ "The Recorder of the City of London should be, and of usage has been, one of the most skilful and virtuous *apprentices at law* in the whole kingdom."—Liber Albus, p. 111; c. xv. p. 38.

⁵ William Babington, the King's Attorney-General in 1414, was one of the grave and famous apprentices of the law mentioned in the Parliament

Position of
higher ap-
prentices
of the law.

Obligation
to take the
coif.

The position of a *famous apprentice of the law* in the fifteenth century was no doubt a very good one, and would perhaps be reluctantly given up altogether for a judgeship, the tenure of which in those days was merely *durante bene placito*, and we have in a record of the reign of Henry V. a remarkable proof of this state of things. In 1415, whilst the King was occupied in the French war, and his brother John, Duke of Bedford, was Regent or Protector here, there were five grave and *famous apprentices of the law* who had writs of summons directed to them in due form to serve the King's people by taking on them the state and degree of Serjeants-at-law, and, having in vain tried to excuse themselves from giving up their more profitable and securer position as apprentices of the law, they were cited to attend the Parliament to explain their conduct, and at last were induced to take the coif by the *persuasion* of *Parliament* and of the imperious Regent, as little accustomed to be disobeyed in England as in France.¹

Roll of 1416 as required to take the state and degree of Serjeant-at-law. See below.

¹ The Parliament Roll of 5 Hen. V. n. 10, has the following entry :—

“L'ASSURANCE CE CEUX QI SONT NOMEZ D'ESTRE SERJEANTS DE LA LEY.

“*Fait assavoir, qe combien sur grande compleinte fait a nostre tressouverain seigneur le Roy, de ceo qe les gentz de Roialme en lour suites, matiers, et causes moevez et pendantz en les Courtz n'eussent si bene esloit come ils soleient avoir, per cause de si petit nombre qe y fuit des Serjeantz de la Ley, a tres grande de sayse, meschef, et damage de son people. Et nestre dit souverain Seigneur voillant oustier tieux meschiefs et damages, per advis de son conseil, fist appeller longe temps passee, certains Apprentices de la Ley, et lour fist enjoindre estreitement de prendre l'estat de serjant pur l'ayse et seurtee de toutz ceux q'avoient affaire en ses courtz, avanditz ; cest assavoir John Martyn, William Babington, William Pole, William Westbury, John Ilyn, and Thomas Rolfe ; nient mains ne ont ils par ceo mys en execution, come l'onourable et puissant Prince, le Duc de Bedford, Lieutenant du Roy ad, per uraie enformation ore entendu ; mesme le Lieutenant eiant a tout ceo consideration, del assent des seigneurs Esprituelx et Temporelx assemblez en*

The great lawyer, Serjeant Plowden,¹ who was called to the Coif in 1558,² rejoiced in his older designation of *the learned apprentice of the law*, and such designation seems always to have been adhered to by his family, and to have been used on the title-page of 'Plowden's Commentaries,' published during his life;³ and other famous apprentices of the law continued to be so called long after they were raised to the Coif.

Plowden and other famous apprentices of the law.

By the time that such famous *apprentices of the law* had made that designation an enviable one, it had very much changed from its original meaning, and had become almost synonymous with Pleader or Counsellor, the

Disuse of the term apprentices of the law.

ceste present Parliament, fist venir devant eux illeques en Parlement le xxiiii. jour de Novembre, qe fuit le viii. jour de mesme le Parlement, les ditz Apprentices et eux enjoint de per le Roy sur grande peine, de lour haster a la prise de tiel estat sanz aucun delaie. Et puis cest assavoir le quint jour de Decembre, qe fuit le xx. jour du dit Parlement, viendrent mesmes ceuz Apprentices devant les ditz Lieutenant et seigneurs en Parlement, et prierent de grace qu'ils purroient estre respitez cete partie, tang, a le Terme de la tresseinte Trinite prochein avenir, et promistrent et asseurerent de la perfourmer a celle temps sanz outre delaie ou excusacion geconq; sur quoy et bone deliberacione suz certains causes et matiers, per mesmes ceuz Apprentices, devant eux monstrez et declarez, le dit Lieutenant, del assent avant dit, l'avoit admys et grauntée come ils ont desirez, issint q'ils esterront a le grace de Roy, s'ils ne le perfourment come ils ont promys et asseurez."

These famous *Apprentices de la Ley* thus found more than their match in the famous John, Duke of Bedford, a Regent who ruled in England with a rod of iron and, to use a French king's words, "pendant sa vie faisoit trembler, tous les François." All of the famous *apprentices* seem in after life to have made their mark as Judges or otherwise. See Coke's 2nd Institute, p. 214; Dugdale's Orig. c. xli.; Chron. ser. 58. Some of the proceedings appear in Cotton's Records, 353, and Rot. Claus. 2 H. Vm. Rot. Parl. 5 H. V. n. 10.

¹ Miss Strickland correctly so calls him, vol. iii. p. 544; and in the inscription of the portrait prefixed to one edition of his Commentaries, published in 1761, said to have been taken from an old monument in the Temple Church, he is properly called Edmund Plowden, Serjeant-at-law.

² The date of his Serjeant's writ was 27 April, 5 & 6 Philip & Mary.

³ Serjeant Woolrych quotes from the history of Shrewabury a reference to Mr. Sandford, who is called "brother-in-law to Mr. Ploden learned in the lawes."—'Lives of Eminent Serjeants,' vol. i. p. 124.

Appren-
ticius ad
Barros.

junior apprentices only being regarded as learners, whilst the *Apprenticius ad Barros* gradually got the name first of Utter-Barrister,¹ and then Barrister-at-law; those not called to the Bar being counted merely as students, and the older name of *apprentice of the law* got into disuse, the Serjeants, the Benchers and ancients, and Barristers being again all called, as in old times, "Counsellors," and together constituting the English Bar.

Restric-
tions on
the num-
ber of
Barristers.

The number of men *called to the Bar* at the Inns of Court under the old regulations in comparison with the practice of modern times was indeed very small. The regulations as to attendance during term time, and performing exercises, prevented the call of idle or incompetent men, and the order of the Judges even in the seventeenth century still more prevented the overcrowding the ranks of the Bar.²

¹ The 21 Jac. I. c. 23, s. 6, refers to Utter-Barristers of three years' standing.

² "By the orders of the Judges duly empowered for the purpose in November, 1550—1 Eliz.—exhortation was to be given to the Utter Bar that none should come to any Bar at Westminster, and specially to the Chancery or Whitehall, under ten years' continuance."—Dugdale, Orig. p. 311. And further orders, still more restrictive, were made in 1574 and 1594. See Dugdale's Orig. c. 70. And by general arrangement of the Judges and Benchers, made at Serjeants' Inn on the 20th of June, 1596, it was provided:

"That none be admitted to the Barr, but only such as be at the least seven years' continuance, and have kept the exercises within the House, and abroad in Innes of Chancery, according to the orders of the House.

"*Item*, that there be in one year only four *Utter-Barristers* called in any *Inne of Court* (that is to say), in *Easter Term*, two; and in *Michaelmas Term*, two; where by the orders of the House the Benchers call *Utter Barristers* and where the *Readers* by the order of House do call, then only two by the *Summer Reader* in his *Reading*, and two by the *Lent Reader* in his *Reading*."—Dugdale, Orig. c. 70, p. 316.

The orders for the reformation and better government of the Innes of Court and Chancery made in November, 1624, were in the same direction:

"For that the over-greate multitude in any vocation or Profession does but bring the same into contempt; and that an excessive number of lawyers may have a farther inconvenienc, in respect of multiplying of

Long before the term *apprentice* of the law had come into disuse, a separation had taken place between the *apprentices* and the *attorneys*. What had been the precise position in old times of apprentices entitled to practise: whether they acted only as advocates and Counsel, or merely as attorneys; or usually in both capacities, it is not at this distance of time easy to say.

How far
the appren-
tices acted
as attor-
neys.

Serjeant Manning quotes a record of 1337¹ to prove that the *apprentices of the law* then usually practised as attorneys, and were privileged in that character; but this record hardly proves the statement. John de Codyngton, in the record cited, no doubt appears to have been both

Case of
John de
Codyngton.

needless suits; it is therefore ordered that there shall not be called to the Barr in any one year, by *Readers* or *Benchers* in any one Society, above the number of eight, or according to that proportion, being of continuance and having done the exercises, according to the Orders of the several Houses.

"For that the over-early and hasty practice of *Utter-Barristers* doth make them less grounded and sufficient whereby the Law may be disgraced and the Clyent prejudiced; therefore it is ordered, that for the time to come, no *Utter-Barrister* begin no practice publicly at any Bar at Westminster until he hath been three years at the Bar; except such *Utter-Barristers* that have been Readers in some Houses of Chancery."—Dugdale, Orig. c. lxx. pp. 117, 318.

¹ "To our Lord the King and his Council, shews John de Codyngton, an apprentice of the Court of our Lord the King and Attorney, that whereas the said John has no lands or tenements, and never was armed for peace or for war, Sir (Monsieur) John de Ros, Admiral of our Lord the King, by procurement, has commanded him that he be well and completely (*bien et nettement*) armed and apparelled as a man at arms, at Orewell, on Wednesday the 17th day of March; and that, upon pain of being hanged; and if he come not, to proclaim that he is a rebel, and so cause him to be attached and sent to the next gaol; which would be in disherison of his clients for whom he is attorney, and in destruction of himself, whereof he prays remedy."

Answer.—"Inasmuch as it is testified before the Council that he is an attorney, let it be commanded to Sir (Monsieur) John de Ros, or his lieutenant, that they surcease from the demand which they make against him, and from the distress which they do to him, for this cause."—Petitions in Parliament, 11. Edw. III. of Rol. of Parliament, 966; Ryle, p. 658.

an apprentice of the law and attorney, but he may well have had the latter position from holding office under the Crown or otherwise, for he appears to have been at one time in a high official position,¹ and could hardly be counted among the *common attorneys* in the old ordinary sense of that term, *i.e.*, attorney for any who would engage him.

Common attorneys.

Increase in the number of attorneys.

The expression "common attorney," instead of being, as it originally was, an honourable designation,² came to be a disparagement, and at the beginning of the fifteenth century those who usually practised as attorneys appear to have largely increased, and according to a statute of 1403, damages and mischiefs had ensued to divers persons of the realm by reason of the great number of attorneys ignorant and not learned in the law as they were wont to be before that time.³ The directions given to the Judges by the ordinance of 1292,⁴ to select "*de melioribus et dignioribus at libentius addiscentibus*," had in the course of the intervening century evidently been much neglected; and the evil of the *multitude of attorneys*, their ignorance, carelessness, and misconduct are constantly referred to by Lord Coke and others.

Distinction among the apprentices of the law.

The expression "common attorney" coming to be a term of reproach, the attorneys and apprentices of the law formed distinct classes. However it might have

¹ At the time referred to, 1350, John de Codyngton was actually Clerk of Parliament, and may have been the *special attorney* or *common attorney* (*i.e.* *Attorney-General*) of the Crown, or of some grandee or corporate body.

² Common attorney was at one time really synonymous with *Attorney-General*. Such was the old designation of the *Town Clerk* or *Common Clerk*, just as the ancient Pleader for the City of London got the name of *Common Serjeant* or *Common Counter*.

³ 4 Hen. IV. c. 18.

⁴ Ordinance de attornatis et apprentieciis. See *ante*, p. 111.

been in the early history of the Inns of Court, there was in time a great distinction between apprentices of the law who were *bonâ fide* students, or had after their proper exercises attained the position of *Apprenticii ad Barros*,¹ and apprentices of a lower degree who *followed the law*, and apprentices of still less estate, who practised as attorneys;² and it came to be the practice of the higher societies, the Inns of Court, to prohibit their members from practising as attorneys³ under pain of expulsion, and thus excluded from the Inns of Court, the attorneys had no alternative but either to go to the inferior *Inns of Chancery*, which practically had no control over them, or to keep altogether free from any of the Societies; and for many ages the attorneys and solicitors were subject to no proper system of control or regulation.

Exclusion
of attor-
neys from
the Inns of
Court.

¹ See *ante*, p. 120; and Coke's 2nd Inst. 563.

² See *ante*, p. 120. In an official report on the Fellowship or Society of the Middle Temple (temp. Hen. VIII.), it is said that "for lack of funds, for allowances, and exhibitions, many a good witt is compelled to give over and forsake study before he have any perfect knowledge in the law, and to fall to practising and become a typler in the law."—Dugdale, Orig. c. 61, p. 193.

³ By an order of the Inner Temple in 1558, 23rd of May, 3 & 4 P. & M., quoted in Dugdale, Orig. 147, no attorney or common solicitor was to be admitted into that House without the assent and agreement of the Parliament; and one of the orders made by the Judges by command from the King in Council in 1635 altogether prohibited common attorneys or *solicitors* from being thereafter admitted of any of the four Inns of Court.—Dugdale, Orig. p. 192; see also p. 343.

The following is to be found among the orders for the government of the Inns of Court and Chancery in 1614, confirmed in 1630:—

"For that there ought alwaies to be preserved a difference between a *Counsellor at Law*, which is the principal person next unto *Serjeants* and *Judges* in administration of justice; and *Attourneys* and *Sollicitors*, which are but ministerial persons, and of an inferiour nature; therefore it is ordered, that from henceforth no *Common Attorney* or *Sollicitor* shall be admitted of any of the four Houses of Court."—See Dugdale, Orig. pp. 317, 320.

Attorneys
became
officers of
the Courts.
Old sta-
tutes and
orders
relating to
attorneys.

An act of Henry IV. directed the attorneys to be placed on a roll of the Courts, and regulations followed, aimed more at the reduction of the number of practitioners than at their education or legal regulation. An Act of 1455 reciting that in times past there had not been more than seven or eight attorneys in Norwich, Norfolk, and Suffolk, and in consequence great tranquillity prevailed, with little tribulation on account of vexatious suits and proceedings, whereas there were then upwards of eighty attorneys gaining their living by paltry stirring up suits to the detriment of the whole community, it was directed that henceforth there should be but seven common attorneys in either of the said counties, and two in Norwich.¹

¹ The statute, 33 Hen. VI. c, 7, entitled

“HOW MANY ATTORNIES MAY BE IN NORFOLK, HOW MANY IN SUFFOLK,
AND IN NORWICH.

“Item cum de tempore a diu non elapso infra civitatem Norwici & comitatus Norfolcie & Suffolcie nisi sex vel octo communes attornati ad cur Domini Regis Divertentes ad maximum extitissent quo tempore *magna tranquillitas in dictis civitate & comitatibus regnabat parvaque tribulatio seu vexatio per sectas minus veras vel forinsecas habebatur* Jamque ita est quod in dictis civitate & comitatibus quater viginti attornati vel plures existunt majore parte ipsorum non habente aliquod aliud vivere set solummodo lucrum suum per dictam occupationem attornat ac etiam majore parte ipsorum non existente de sufficiente scientia effendi attornat qui ad unamquamque seriam mercatum & alia loca ubi populi congregatio existit declinant populum exortantes procurantes movantes & excitantes ad sectas minas veras sectas forinsecas sectas pro parvis transgressioibus parvis offensis & parvis summis de debito capiendis quorum actiones sunt triabiles & determinabiles in curiis baronum unde quamplures secte potius ex mala voluntate & malitia quam ex rei veritate procedunt in dictorum inhabitantium civitatis & comitatum predictorum vexationem multiplicem dampnaque non modica necnon omnium curiarum baronum in dictis comitatibus diminutionem perpetuam nisi de remedio in hac parte congruo provideatur. Prefatus Dominus Rex premissa considerans de avis avisamento assensu & auctoritate predictis ordinavit & stabilivit quod totis temporibus futuris sint nisi sex communes attornati in dicto comitatu Norfolcie & sex communes attornati in dicto comitatu Suffolcie & duo communes attornati in dicta civitate Norwici fore attornat in cur de recordo & quod omnes predicti

The distinction between Counsellors-at-law, whether of the old ¹ order of *Serjeants*, or of the modern Barristers (Apprenticii ad Barros), and who were then classed first in the Ordinance de Attornatis, became in course of time still greater, and it is remarkable that this disparity was specially relied on at the time of the Commonwealth. The rules of etiquette already referred to, which gradually prevented the Bar from acting for suitors without intervention of attorneys had not then come into operation. The Barristers of those days seem to have been as free to afford them counsel as the old Serjeants-at-law at the Parvis,² though for general convenience the work of preliminary inquiry, collecting

Increasing distinction between the Attornati and Apprenticii.

quatuordecim attornati sint electi & admissi per duos Capitales Justitios Domini Regis pro tempore extentes de magis sufficientibus & optime instructis juxta discretiones suas et quod electio & admissio omnium attornatorum qui erunt electi & admissi per dictos Justiciarios pro tempore existentes ultra dictum numerum in comitatibus predictis sint vacue & de nulla auctoritate neque recordo et si sit aliqua persona vel persone que presumit vel presumunt aut usurpant vel usurpat super ipsas fore attornatos in curiis de recordo in dictis comitatibus vel civitate aliter quam superius specificatur & hoc sic invento per inquisitionem captam coram Justitiariis pacis in dictis civitate sive comitatibus qui virtute istius ordinationis potestatem inquirendi inde in sessionibus suis habebunt aut aliquo alio modo legitime probato quod tunc ipsa vel ipse que sic presumit vel presumunt se ipsa inde legitime set convict foris faciat viginti libras totiens quotiens tam ad usum ipsius que proinde prosecui velit & quod ipse que proinde velit possit habere actionem in eadem quales jacent in actione de debito ad communem legem super obligatione. Proviso semper quod ordinatio predicta incipiat & primo sumat effectum ad sextum pasche proximo futurum & non ante si ordinatio illa Justitiariis videatur rationabilis."

This statute was not actually repealed till 1843, when the 6 & 7 Vict. c. 73, included it in the schedule of repealed statutes. What steps were ever taken to enforce it does not appear. It is hardly necessary to refer to the labours of those writers who have speculated on explanation of this or the profound remark of Mr. Daines Barrington ('Observations on Annulled Statutes,' p. 414) as to "*the ignorance of the Parliament exceeding that of the Attorneys.*"

¹ *Ante*, Introduction.

² See *ante*, p. 8.

the evidence, and in fact getting up the case, was often done by persons accustomed to such work, who in those days were called *common solicitors*.

Common
solicitors.

In 1654 general orders of the Judges required that *common solicitors* should not be allowed to practise unless duly admitted on the Rolls as attorneys; and in order to be so admitted it was made necessary to have previously served for five years as a *common solicitor*, or as clerk to some Judge, Serjeant-at-law practising counsellor, attorney, clerk or officer of one of the Courts at Westminster.

Course of
legislation
as to bar-
risters and
solicitors.

The course of positive legislation in this country with reference to the legal profession has helped little really to improve Practitioners or benefit the community. We have already referred to the old statutes as to *deceit malpractice*, and *maintenance* and *champerty*. Subsequent Acts of Parliament carefully provided for the heavy taxation of lawyers and legal proceedings, the latter being from time to time grievously burthened; so that the legal profession, Students, articled clerks, Barristers, and Solicitors have been made to contribute towards the public revenue in a manner altogether out of proportion to the rest of the community. Since those times there have been many very beneficial changes, and some progress has been made in legal education. It is sufficient here to say that the present provisions on this subject are very minute, and the Council of the Inns of Court have effectually aided the Council of legal education in this work; and it is but fair to say that the second branch of the legal profession—the *Solicitors*, as they are now all called—have, by means of their very vigilant societies, obtained, with the sanction of Parliament and the concurrence of the

Progress of
legal edu-
cation.

Judges, a system of regulations affecting their body, certainly of *no less practical* importance than the regulations of the Inns of Court affecting Barristers and Students;¹ and in the same spirit of exceptional legislation the Solicitors have been in some way recompensed for the large burthen thus imposed, by having conferred on them a legal monopoly out of all comparison with any recognised in our time by the law of England.²

Reforms recently effected are certainly calculated to produce improvement in the legal Profession. The new system of legal education and examinations is likely to raise the character of both branches of practitioners to prevent incompetent men being promoted to Judicial and other offices on the false test of a certain number of *years' standing at the Bar*, or unworthy practitioners being allowed to follow the law to the prejudice and annoyance of the community at large.

Reforms in
legal
education.

¹ These remarks will be found on investigation to be completely borne out. The Stamp Acts, from the Revolution till our own days, appear to have been formed with the object of enabling the Exchequer to get from every service as much as it was practicable to exact, and almost every legal document has had in its time imposed on it an exorbitant stamp duty; whilst the table of duties shew that the taxation of the lawyers' articled clerks, of members of Inns of Court, barristers, solicitors, special pleaders, and conveyancers, has been simply oppressive.

² See on this, 6 & 7 Vict. c. 73, s. 35, and Pulling's Law of Attorneys and Solicitors, 3rd Ed.

CHAPTER V.

THE HOSTELS OR INNS OF THE JUDGES AND SERJEANTS,
AND THE INNS OF COURT AND CHANCERY.

Imperfect
informa-
tion
usually
supplied.

THE history of these institutions is directly connected with our subject; but the information afforded by our law books and law reports is very meagre. Of the origin and constitution of the Inns of Court very little can be learned from legal writers, and even less from the Judicial *dicta* of Westminster Hall, when the law relating to the subject has been called in question.

Anomalous
position of
the Inns of
Court.

Having before them the solemn utterances from the Judges with respect to the Inns of Court—that “*their original institution nowhere distinctly appears*”—that “*they are voluntary societies which for ages have submitted to government like other seminaries of learning*”—and that they are not amenable to the ordinary Courts of law even in the exercise of their very large control over the legal profession, people are apt to believe that the institution is something very like an anomaly.

Various
character
of the Inns.

How far this is true we shall have occasion hereafter to consider. At present our attention must be confined to what is actually proved—with reference as well to the Inns of the Judges and Serjeants, as also to the Inns

of the *Apprentices* of the law. The early accounts of the two institutions are closely connected. Their object and destination, their constitution and character, were altogether different; and it is best to deal with the two classes of institutions as quite distinct—the Inns of the Judges and Serjeants of the Coif, fixed on and changed from time to time, entirely as it suited the personal convenience of the members; and the Inns of Court originally also mere voluntary associations, but under circumstances altogether different, gradually formed into public institutions, invested with important powers and duties, deriving therefrom large revenues, and clothed with distinct trusts. The two classes of institutions thus essentially differed, whilst they altogether contrasted in point of numbers.

The whole body of Judges and Serjeants of the Coif hardly ever exceeded forty, and their *Inns* were of their own choosing, with full liberty of retiring and rejoining, as in a private club; so that the Serjeants' Inns were really *private* institutions, whilst the Inns of Court and Chancery counted among their members the whole of the legal profession, Students, Apprentices, Barristers, and Counsellors, as well as in old times all the Clerks of the Chancery, and all the Attorneys and Solicitors, and were altogether *public* institutions.

The actual origin of these institutions seems easy enough to understand. We must bear in mind that at the period when they are first mentioned, the word *hostel*, or Inn, had not the narrow meaning attached to the Hotel Inn or Tavern of modern times. In London, as in Paris and elsewhere, "hostel" formerly meant the grand mansion of Prince or Grandee, or the hospitium of some holy order, or the chamber of some municipal

Origin of
the Inns of
Court, etc.

body.¹ The expression Inn or Hotel for taverns or public-houses of reception of travellers in this country hardly dates back beyond the fifteenth century.²

Antecedents of the Inns of Court, etc.

The name of several of the Inns of Court and Chancery serves to recall the time when it was either "l'hôtel d'un grand Seigneur" or "l'hospice d'un ordre fameux."

The *Temple* was until 1326 the hospitium of the Knights Templars, who had removed there from Holborn a century and a half before. *Lincoln's Inn* bears the name of the mansion of a famous Earl of Lincoln, who in the time of Edward II. built his hostel *there or thereabouts*. Gray's Inn, Clifford's Inn, and Furnival's Inn were certainly the Inns of so many noble families in days long since gone by.

Others of these ancient Inns record names and events dating back from a remote time, though with no such grand associations.

Thavie's Inn.

Thavie's Inn, the oldest of the hostels of the apprentices of the law was so called after its owner, John Thavie or Tavy, citizen of London and Armourer, who in the time of Edward III., received an association of *Apprentices of the Law* as his tenants or lodgers. Others of such Inns, as we shall see, have an equally humble origin.

¹ The old French interpretation of *hostel* is *grande maison d'un Prince ou d'un grand Seigneur*—*l'hôtel Richelieu* and *l'hôtel Mirabeau* were the mansions of grandes not only living at different times, but filling very different positions. Even at this day many a private mansion in Paris of comparatively humble pretensions is called *l'hôtel de monsieur*.

² Common hostellers or keepers of public hostels are certainly referred to in the old books of the City of London before the time of Edward IV., when (1473) the hostellers obtained an order from the Court of Aldermen to change their name to Innholders. See *Liber Albus*, IV., tit. *Hostellers* and *Herbergeours*.

In 1302, Edward I. lodged in a chamber of the Archbishop of York's *hostel*, near Westminster.—Rot. Claus. 30 Edw. I., m. 8.

Whilst the *Inns of Court and Chancery* all retained the name of the ancient owners or occupiers, a different course was followed with the *Inns* occupied by the Judges and Serjeants of the Coif. Each of these has always thenceforth been called *honoris causâ* "Serjeants' Inn," whatever its previous name or history.

The Inns of the Judges and Serjeants.

Serjeants' Inn in Chancery Lane appears to have been the hostel of Judges and Serjeants of the Coif for more than four centuries—having been let to certain brothers of the order in 1416, its older name Faringdon Inn having been abandoned.¹

Serjeants' Inn, Chancery Lane.

Serjeants' Inn in Fleet Street was in like manner the hostel of other Judges and Serjeants of the Coif from 1443 to 1758, when it was given up to the freeholders, the Dean and Chapter of York,² the place being still

¹ This Inn was described in a deed in 1394, as *tenementum Dom Johann Sharle*, and a few years afterwards as *Faryndon's Inn*; but it seems even then to have been occupied by Judges and Serjeants on whose behalf Sharle and Faryndon appear to have held the lease, and it was in 1416 let to the Justices and Serjeants-at-law who had previously lodged there, and the name *Faryngdon Inn* was at once altered to *Serjeants' Inn*, which it has ever since retained. The tenure was by lease only, which was renewed on payments of fines sometimes complained of as very exorbitant. In 1758 the rest of the members of the order, who were then lodged in *Serjeants' Inn*, Fleet Street, joined the Inn in Chancery Lane. In 1834 the members of this Inn raised by way of mortgage a sum of money among themselves to purchase the freehold from the See of Ely, making a very large outlay; and the encumbrances thus occasioned were being gradually paid off by fixed contributions from the old and new members, when, in 1877, by the operation of the Judicature Acts, the accession of new members was practically put an end to. See the clause, *ante*, p. 100, providing that the old law of England requiring the judges to be of the *degree* of the Coif should no longer be continued. In this change of the law, the old Inn of the Serjeants was at once consigned to destruction. The Judges and Serjeants took the only course open to them, sold their property, paid off all charges, and wound up their corporate affairs in due course. Though the corporate existence continues, and the *status et gradus* of the Brothers of the Coif are in no way personally affected, yet for reasons already sufficiently explained, unless there is some remedial provision, the time-honoured Order of the Coif will ere long also *cease to exist*.

² In a lease from the Dean and Chapter of York, October 21, H. 6, to

called "Serjeants' Inn," though with the exception of the famous Serjeant Wilde (Lord Truro), no member of the order has since had chambers there.

These two *Serjeants' Inns* are really the only hostels of the Judges and Serjeants-at-law of which we have reliable information, but previous to the fifteenth century there were probably other Serjeants' Inns.¹

The hostels
of the ap-
prentices of
the law.

The hostels of the apprentices of the law, or as they came to be called, the Inns of Court and Chancery, are institutions which seem to have been in existence for more than five hundred years, and during all that time

William Antrous, it is described as "*unum mess. cum gardeno in parochia S. Dunstane quod nuper fuit Johannis Rote et in quo Johann. Ellerkar et alii servientes ad legem nuper inhabitant*;" and Dugdale surmises that the new lease was only granted to Antrous in trust for the Serjeants, and it is certain that Judges and Serjeants held it by lease renewed from time to time under the name of Serjeants' Inn, Fleet Street, till 1666, when it was destroyed by the great fire, and entirely rebuilt at the Serjeants' cost. They then had fresh leases, the last of which expired in 1758, when it was not deemed advisable to ask for a fresh lease. Serjeants' Inn in Fleet Street thus destroyed in the great fire of London in 1666, was rebuilt by the Serjeants from funds entirely raised among themselves on a very equitable plan, set forth in Dugdale's Orig. 327 (a course imitated by the members of Serjeants' Inn, Chancery Lane, in 1834, in adjusting the cost of rebuilding that Inn). When their lease expired in 1758, the members of Serjeants' Inn in Fleet Street joined the Inn in Chancery Lane and thenceforward constituted *one Inn*. Under the private Act, in 1834, for sanctioning the sale of the freehold of this Inn to the Society by the See of Ely, the Society was constituted a corporation, and this incorporated Society still continues, though without worldly property, for its accounts have all been wound up. Its only remaining possessions, the interesting old pictures, have been presented to the National Portrait Gallery, and now form part of that collection.

¹ One of these is spoken of by London antiquaries as being over against the Church of St. Andrew's, Holborn, and an inquisitio post mortem at Guildhall, before the Lord Mayor as Escheator, in 1497, found that Lord Scrope of Bolton died seised (by feoffment of Sir Guy Fairfax, one of the King's Justices) of one house or tenement late called Serjeants' Inn, situate against the Church of S. Andrew in Oldbourne, in the City of London, with two gardens and two messuages to the same building. See Stow's 'Survey of London,' tit. Scrope's Inn.

have been immediately identified with the Bench and the Bar, if not the whole of the legal profession in this country; and yet, as already stated, their warrant, according to the view taken of them by those of the highest authority in Westminster Hall, rests on the most insecure basis; for, in the words of Lord Mansfield,¹ so often quoted by writers on the subject,² "the original institution of the Inns of Court nowhere precisely appears; but it is certain that they are *not corporations*, and have no *charter* from the Crown. They are *voluntary societies*, which for ages have submitted to Government, like that of other seminaries of learning."

Lord Mansfield's observations.

Sir William Blackstone is less indistinct but certainly more regardless of actual facts and dates. After referring to the revived study of the civil law in the twelfth century, and the various prohibitions of law schools in London, and the fixing the Court of Common Pleas at Westminster by Magna Charta, he speaks of "the professors of the common law *being thus brought together, and the lucky assemblage*³, falling [into a kind of

Blackstone's account of the Inns of Court.

¹ See *Rex v. Gray's Inn*, Douglas, 354.

² See 6th Report of Common Law Commissioners.

³ "In consequence of this lucky assemblage they naturally fell into a kind of collegiate order, and being excluded from Oxford and Cambridge, found it necessary to establish a new university of their own. This they did by purchasing at various times certain houses (now called the Inns of Court and Chancery) between the City of Westminster, the place of holding the King's Courts, and the City of London; for advantage of ready access to the one, and plenty of provisions in the other. Here exercises were performed, lectures read, and degrees were at length conferred in the Common Law, as at other universities in the Canon and Civil. The degrees were those of barristers; first styled apprentices, from *apprendre*, to learn, who answered to our bachelors; as the state and degree of a Serjeant, *Servientes ad legem*, did to that of Doctor." 1 Bl. Com. 23, and Blackstone goes on to say that "*The Crown seems to have soon taken under its protection this infant seminary of common law; and the more effectually to foster and cherish it*, King Henry the Third, in the nineteenth year of

collegiate order directly bringing about the establishment of a new university—that composed of the Inns of Court.”

The actual origin of the Inns of Court.

It is necessary to remind the reader that the various matters thus strung together were really not coincident; for they occurred at dates very distant from one another: and Sir William Blackstone’s anachronisms peep out in spite of his polished sentences, leaving his readers still to rest on Lord Mansfield’s indecisive judgment and most cautious statement that “the original constitution of the Inns of Court nowhere precisely appears.”

Prohibition of schools of law.

The schools of law attempted to be set up in the City of London in the time of Stephen certainly have no connection with the institution of the Inns of Court: for according to the views of the old chroniclers, these *schools* were designed only for the studying and debating questions of *civil* and *canon law*:¹ and the account we have from Fitzstephen² of the character of the schools

his reign, issued out an order directed to the Mayor and Sheriffs of London commanding that no regent of any law schools within that city should for the future teach law therein.”—1 Bl. Com. 23.

¹ In one of Selden’s learned notes to Fortescue, reference is made to this asserted proclamation of Stephen and the opinion of Friar Bacon, who speaks of it as intended to apply only ‘allatis legibus Italiæ in Angliam,’ and the statement of John of Salisbury that the proclamation applied only to the canon law; neither of those great authorities even suggesting that the apprentices ad legem were in any way concerned or affected, and the account of the schools of that time do not include law schools.

² William Fitzstephen, the Canterbury monk, who wrote the life of Thomas à Beckett, tells us that “in the reign of King Stephen and of Henry II. there were in London three principal churches, which had famous schools, either by privilege and ancient dignity, or by favour of some particular persons, as of doctors which were accounted notable and renowned for knowledge in philosophy. And there were other inferior schools also.

“Upon festival days the masters made solemn meetings in the churches, where their scholars disputed logically and demonstratively; some bringing

established at that time shows that they were hardly calculated to promote real learning of any kind, and we certainly have little reason for identifying the law schools referred to in the Royal proclamations of the twelfth century with the Inns of Court and Chancery or the orthodox *apprentices of the law*. The law schools attempted to be set up at this early period were, according to the best authorities, designed, not for teaching the law of the land, but inculcating by means of clerical teaching the paramount rules of the canon law, or as far as practicable the doctrines of the civilians.¹

Whilst the professors of the civil and canon law were so energetic in their efforts to inculcate their rules and doctrines, there seems for a long time to have been no corresponding alacrity in teaching the common law of England. Even long after the date of Magna Charta, when the Court of Common Pleas was fixed at

enthimems, others perfect syllogisms; some disputed for shew, others to trace out the truth; cunning sophisters were thought brave scholars when they flowed with words; others used fallacies; rhetoricians spake aptly to persuade, observing the precepts of art, and omitting nothing that might serve their purpose; the boys of diverse schools did cap or pot verses, and contended of the principles of grammar; there were some which on the other side with epigrams and rymes, nipping and quipping their fellows, and the faults of others, though suppressing their names, moved thereby much laughter among their auditors."—Fitzstephen, description of London.

¹ It is easy to account for the zeal of the clergy in the twelfth century for teaching the rules of the canon and civil law. After the finding of the Pandects at Amalfi in 1130, copies seem to have been sought for in every monastery. Extracts served as a sort of school-book, and the rising generation were all able to obtain a smattering of the civil law, and in an ignorant age eagerly turned it to account. In the Courts of Common Law it was for the most part ignored, and by its general adoption here the clergy would be at a premium as legal practitioners, and be able materially to advance the interests of the Church. In France the monks were prohibited from studying the civil law, and a decretal about this time prevented its being taught in the University of Paris. Jones, French Bar, 59.

Westminster, we have no trace of any regular institution designed for the purpose of educating students or practitioners. The attempt, in 1244, to set up schools of law in London was solemnly opposed, and the law schools suppressed;¹ and when half a century afterwards the Judges were directed to select "*de maturioribus et legalioribus addiscentibus certum numerum de attornatis et apprenticiis*," we have nothing but conjecture to help us as to the *school* where these *legaliores* apprentices could have been educated. It is quite certain that neither of the existing Inns—Inns of Court or Inns of Chancery—can trace back its history to a period earlier than the reign of Edward III., when we first hear of "*les apprentices en hostels*,"² etc., without any information as to their rules and regulations.

Age of the
oldest Inn
of Court.

Numerous
Royal
founda-
tions,
temp.
Edw. III.

The reign of Edward III. was remarkable for the number of collegiate institutions, corporations, and privileged associations established for educational or municipal or other purposes.³ The charters of most

¹ "Commandment is given to the Mayor and Sheriffs of London, that they cause proclamation to be made throughout the whole City, and firmly to enjoin that no man should set up schools of the laws in the said city, and teach the laws there for the time to come; and if any man should set up such schools there, that they cause them to cease without delay. Witness the King of Basing," 11 Dec., 28, Hen. 23. See Strypes' Stow, vol. i. p. 121.

² In a real action in the Common Bench in 1355, 29 Edw. III. (a *quod ei de forceat* after recovery suffered), an exception being taken, it was answered by the Chief Justice de Willoughby and Serjeant Skipwith, that such exception was not good in that Court, though they had often heard the same for an exception amongst the *apprentices en les hostels*—Year Book, 29 Edw. III., f. 476.

³ In Chapter xiii. of Madex, History of the Exchequer, there is a very long account of fines for royal concessions running over a wide range—fines for charters of privileges, for leave to hold or to give up offices, for licenses of various kinds, for the King's favour, for his protection, and for his mediation, etc.

of the more ancient of the City companies, five out of six of the older colleges at Cambridge,¹ and two, at all events, of the Oxford colleges,² date back to this period.

Previous to the formation of *colleges* at Oxford and Cambridge the students seem to have taken up their quarters at *hostels* or inns specially devoted to the purpose. Such appears certainly to have been the case at Cambridge in the time of Edward III.,³ and at Oxford to a much later time.⁴ Whatever houses or hostels were used in common by the apprentices of the law before the time of Edward III., no trace of them could be found by Dugdale.⁵ Thenceforth, however, there are very full records of these Hostels or Inns of the apprentices of the law, which came in time to be called the *Inns of Court*.

Hostels at
Oxford and
Cambridge.

¹ Clare Hall, Pembroke, Gonville and Caius, Corpus Christi, and Trinity Hall.

² New College and Trinity.

³ Peterhouse originally consisted of two *hostels* appropriated by Hugh de Balsam to the use of students in 1257. Trinity Hall was at first a *hostel* of the same character, erected into a college by license from Edward III. in 1350. Corpus was established by the union, in 1351, of two of such *hostels* belonging to the guilds *Corporis Christi et beatæ Mariæ Virginis*, and part of Gonville and Caius, founded in 1348, consists of an older institution called *Ffyswyhes Hostel*. One portion of Trinity College is still called *Bishops Hostel*.

⁴ *Peckwater*, now the Quadrangle at Christchurch, was the Inn or hostel which stood at the south-east corner of the present Court, belonging to Richard Peckwater as far back as the time of Henry III.

⁵ Dugdale, speaking of the ordinance *de attorneyis et apprenticiis* of 1292, observes "that soon afterwards, though we have no memorial of the direct time or absolute certainty of the places, we may safely conclude that they settled in certain hostels or Inns, which were thenceforth called Inns of Court, because the students in them did there not only study the laws, but use such other exercise that might make them more serviceable to the King's Court . . . so that these hostels became nurseries or seminaries of the Court, taking their denomination of the end wherefore they were so instituted were called therefore the Inns of Court."—Dugdale, *Orig. c. lv. p. 141*.

Story of
Thavie's
Inn.

Thavie's Inn in Holborn is spoken of by Coke and many other writers as the first of these hostels of which there is any reliable record; and the will of John Thavie, the worthy citizen and armourer who died in the middle of the fourteenth century, serves to show that his *Inn* near the Church of St. Andrew's, Holborn, had then for some time been the abode of apprentices of the law. The will of John Thavie, or Tavie, is constantly referred to by Coke. It is set out in the Preface to his 10th Book of Reports; and we see how the good citizen gave all his tenements in "St. Andrews, Olborne," to his wife Alice for life, and then to be applied for the repairs of the church; and the testator directed that "all that hostel in which the apprentices of the law were wont to dwell should be sold, and out of the produce a proper chaplain found to pray for the souls of himself and his wife."¹ John Thavie's old

¹ John Thavie's will was proved and enrolled in the Hustings Court of the City of London in 1350, and among the Hustings records at Guildhall it may still be seen: "Inter communia placita tenta in Hustingo London. die Lunæ in festo sancti Clementis Papæ, anno regni E. 3 post Conquestum 23. viz die Jovis proxime ante festum Sancti Gregorii Papæ, anno Domini 1348. Ego Johannes Tavie Armiger lego animam meam Deo, &c. Item lego omnia tenementa mea cum omnibus pertinentiis quæ habeo in parti australi in parochia sancti Andree &c. Aliciæ uxori meæ ad totum terminum vitæ suæ; et quod post decessum prædictæ Aliciæ, totum illud Hospitium in quo Apprenticii legis habitare solebant per executores meos, si superstites fuerint, &c. vendatur, et quod de pecuniâ inde perceptâ unus, Capellanus idoneus pro animâ meâ, &c. celebrand. dummodo pecunia illa perseveraverit inveniatur. Item lego totum illud tenementum in quo inhabito cum tribus shopis, post decessum ipsius Aliciæ, ad fabricam ecclesiæ Sancti Andree." Coke's remarks on this are: "Out of this record I observe three things; first, for the antiquity of apprentices of the law, that the house of Chancery in Holborn now called Tavies Inn, had been of ancient time, before the three and twentieth year of E. 3, (which is about two hundred sixty and four years past) a house of Court wherein the apprentices of the law were wont to inhabit. 2. For the antiquity and true name of the House of Chancery, rightly called Tavies Inn. 3. That upon this will the case in 21 K. 2. Tit. Devise, Fitzh. 27 was

hostel is thus shown to have been used by the apprentices of the law as an Inn of Court more than five hundred years ago.

The possession of most of the smaller hostels or Inns seems to have been originally acquired by the apprentices of the law in somewhat the same way as Thavie's

Early
history of
the Inns.

adjudged, that the remainder of the house devised to the said Alice for life, belonged to the Parson of the church of Holborn and his successors. And in 39 Ed. 3. fol. 47, b. in a *Quod ei deforceat*, Ingleby Serjeant, of counsel with the tenant, took this exception; this writ (saith he) is founded upon a record precedent, and therefore we pray, that the demandant may put the record (whereupon this writ dependeth) in certain, and in case of attaind and scire facias (which depend upon records) the tenant shall have oyer of the record: Wilby and Skipwith. "This was never any exception in this place, but we have heard it oftentimes amongst the apprentices in houses of Court."—Coke's 10 Rep. Proem. xxiii. *Plac. de Hust. Lond. die Lun. in festo St. Clem.* 23 Edw. 3. Coke seems to have been so much struck with this record of Thavie's will, that he kept by him a transcript which he was in the habit of showing to those who were interested in such subjects. Sir George Buc, a literary man of Coke's time, in commenting on the account of the houses of Court in Howe's edition of Stow, says: "I must and will begin with Thavie's Inn, for besides that at my first coming to London I was admitted for probatim into that good house, I take it to be the oldest Inn of Chancery, at the least in Holborn. It was before the dwelling of an honest citizen called John Thavie, an armourer, and was rented of him in the time of King Edward 3 by the Chief Professors then of the law, viz. apprentices, as it is yet extant in a record in the Hustings, and whereof my Lord Coke showed to me the transcript."—Sir George Buc in Howe's Stow, 1074, ed. 1631. John Thavie designed by his will to have his property applied to pious uses, probably to benefit only the Church, but the lawyers seem certainly to have had some advantages from it as well as the clergy. The property appears to have been the subject of litigation at an early period, as may be seen by the case above quoted from the Year-books, and a great deal of subsequent litigation is referred to in the Report of the Charity Commissioners in 1834. The income of the Thavie estate is now very considerable, and the parish of St. Andrew, Holborn, benefited in proportion. The freehold of Thavie's Inn came in course of time to Gregory Nicholls, citizen and hosier, who in the time of Edw. VI. granted it to the Benchers of Lincoln's Inn and their successors for the use of the students of the law, and the Benchers seem at once to have demised it to the Principal and Fellows of Thavie's Inn, with special provisions as to the students becoming members of Lincoln's Inn.

Inn, viz. by mere hiring from the actual owners: this temporary possession being in aftertimes made permanent by lease or purchase.

Thus Clifford's Inn was so acquired in the time of Edward III.¹ Furnival's, temp. Henry IV.,² Lion's Inn³ and Staple Inn⁴ temp. Henry V., Barnard's Inn⁵

¹ Clifford's Inn was in 1309 Crown property, and granted by Edward II., at a rent service of one penny, to Robert de Clifford, whose widow, Isabell Lady de Clifford, in 1345 demised it *Apprenticiis de Banco* at a yearly rent of £10, which lease was from time to time renewed. It was sold to Nicholas Sulyard for £600 and £4 per annum.—Dugdale, Orig. 187.

² See Dugd., Orig. 270, where he carries back to 1408, the occupation of Furnival's Inn by the law students under the Lords de Furnival, whose descendant George Earl of Shrewsbury, in 1546 sold the freehold for £120 to Edward Gryffin the Solicitor-General and two other Governors of Lincoln's Inn for the use of that society, who have since sold it; so that in 1854 the owners reported merely to the Commission of Inquiry into the Inns of Court, "This is not an Inn." See Report, p. 260.

³ "That this was an Inn of Chancery in K. Henry 5 time the old books of the stewards' accounts do show, but how long before is uncertain."—Dugd. Orig. c. 60, p. 187. Before, it had the sign of the Black Lion till the time of Henry VII. It is now regarded as private property, and was so represented, in evidence of Mr. T. Tyrrell, to the Inns of Court Inquiry Commissioners in 1854.

⁴ Dugdale refers to an ancient MS. written temp. Henry V. containing orders and constitutions of the Society of Staple Inn which appears to have originally belonged to the English merchants of the Staple. These orders treat Staple Inn as an Inn of Chancery, but the first reliable record is in 1529, when the freehold was conveyed to the ancients of Gray's Inn, as "all that messuage or Inne of Chancery commonly called Staple Inne." See Dugdale, Orig. Jur. 310, referring to Regist. Hosp. Grayensis, fol. 218. Sir George Buc, in 1631, said, "I cannot choose but make report and much to the praise and commendation of the Gentlemen of this house, that they have bestowed great cost in now building a fayre Hall of brick and two parts of the outward courtyards besides other lodging in the garden and elsewhere and have thereby made it the fayrest Inne of Chancery in this Universitie."—Sir George Buc, Howe's Stow, 1065.

⁵ Barnard's Inn, formerly Mackworth's Inn, called after Mackworth Dean of Lincoln, temp. Henry VI., who left it *pro salute animæ* to the Dean and Chapter of Lincoln, derived its present name from their lessee, Lionel Barnard, who let it to students and apprentices of the law, chiefly mentioned in connection with a London Town and Gown uproar in 1454, the Principals of this Inn, with those of Clifford's Inn and Furnival's Inn, being committed to Hertford Gaol. See Stow's Annals, 32 Henry VI.

temp. Henry VI., Clement's Inn and New Inn temp. Edward IV.¹

The records of these *Hostels* or *Inns* previous to the fifteenth century are but few, and afford little evidence of their real constitution. We have proof enough of their actual existence, and in many instances of the dates of their establishment, varying from the time of Edward III. to that of Henry VIII., but, excepting the statements made in the already quoted dissertation "*de laudibus legum Angliæ*," we know little else about them, and we certainly have no records of their constitution until long after Fortescue's death, and the orders of Philip and Mary and Elizabeth placed them under a system of government.

The story of the greater *Inns*—the *Inns of Court* as they came in time to be exclusively called—does not essentially differ from that of the lesser *Inns*. Their possessions, being larger, were obtained in a more solemn form, but the account of their title and early constitution is of a similar character. From the first all the *Inns* were *voluntary associations*, and it was only by slow degrees that they first acquired wealth and influence, and then exercised a control deviating from the general law.

The Inns
of Court.

These societies of the *Inns of Court*, like those of the

Acquisi-
tion of

¹ Clement's Inn seems to have been first acquired by men of law and counsellors in the time of Edward IV. See Dugdale, Orig. c. 59, quoting the book of entries Rec. M. 19 Edward IV., where it is called *hospitium hominum Curie Regis temporalis, necnon hominum Consiliariorum legis*. The inheritance falling to the Earls of Clare it continued to be held by apprentices of the law. See Dugdale, c. 59, p. 187.

New Inn seems to have been a common Inn or tavern called "Our Ladys Inn," with the sign of the Virgin Mary, till 1500, when it was purchased or hired by Sir John Fineaux, the Chief Justice, for the use of certain law students who came from *St. George's Inn*.

property
by the Inns
of Court.

lesser Inns, came into possession as tenants or lodgers, and at last they became sole proprietors; but it is a remarkable circumstance that each of these greater hostels, before falling to the lot of the apprentices of the law, had become *ecclesiastical property*. The Temple was first demised to the lawyers by the religious body known as the Knights Hospitallers,¹ Lincoln's Inn,² by the Bishops of Chichester, and Gray's Inn by the Monastery of Shene. The Knights Templars, whose London hospitium was originally in Holborn, seem to have changed their quarters at their own pleasure and convenience; and at the end of the twelfth century we find them removed from this place (afterwards called the "Old Temple") southwards to the banks of the Thames, where they built their *New Temple*, their Church, and their Hall, and became in every sense a power in the state. Their pride and insolence even then caused Matthew Paris to recall the time of the ancient parade of poverty and humility.

Acquisition of the
Temple.

The first substantial acquisition of property made by the apprentices of the law seems clearly to have been this London hospitium of the Knights Templars, or the New Temple,³ which fell into the hands of the Crown

¹ See *post*, p. 143.

² The Knights Templars seem to have removed from their London hospitium in Holborn to the New Temple at the end of the twelfth century, and fifty years afterwards the order was in its greatest pride and glory; so much so that their foolish ostentation was giving general offence, and Matthew Paris speaks of the contrast between their behaviour then and their early humility, pretending to be so poor as to have only one horse to serve two of them (as denoted on their *seal with two men riding on one horse*), and all of a sudden becoming so insolent that they disdained other orders, and sorted themselves with noblemen.—Matthew Paris, 1245.

³ How the riches of the Templars tempted the King to rob the Master of the New Temple, and how in less than sixty years after the time of their greatest glory they came to grief here, as indeed throughout Europe,

at the beginning of the fourteenth century,¹ and not long afterwards fell to the lot of the learned apprentices of the law. This prize having already, under the weak administration of Edward II., been granted successively to court favourites, was, on reverting to the Crown by forfeiture, granted in accordance with a settled plan to the Knights Hospitallers of St. John of Jerusalem, in order to be let to approved lessees, and in or about the year 1324 this arrangement was duly carried out; the Knights Hospitallers, after obtaining the King's grant of the New Temple,² letting the property to "divers apprentices of the law that came from Thavie's Inn in Holborn,"³ at a rent of £10.

we need not now dwell on. In 1308 the fate of the Knights Templars was sealed in England, as it was about the same time in France and other countries.

¹ In 1313 the whole of the property of the order in the New Temple was very soon seized by Edward II. and made a subject of Court favour, and after Aimes de la Valence and Hugh Despencer had successively held the property and forfeited the same to the Crown, it was granted, by a charter from Edward III. to the Knights Hospitallers, and from them to the apprentices of the law.

² When the suppression of the order of Knights Templars throughout Europe was effected by the Council of Vienna it was at once resolved that their property should go to the Knights Hospitallers of St. John of Jerusalem; and at a Parliament held at Westminster in 1324 it was arranged as follows:—"The military order of Templars having ceased, and being dissolved it pleases the King, magnates and others, for the health of their souls, that their lands shall be assigned to other men of religion, it is therefore agreed, proclaimed, and enacted, by the King, Prelates, Earls, Barons, 'et alios Proceres,' that all the lands shall be assigned and delivered to the order of the Hospital of St. John of Jerusalem," etc.—Parl. Writs, 11; 17 Edward II. st. 1.

³ Dugdale, Orig. c. 57, p. 145.

Although Dugdale relies only on tradition with respect to this arrangement having been made, yet in many points the tradition is very closely borne out by records. When at the beginning of the fourteenth century the order of the Knights Templars was suppressed, and their possessions were legally made over to the Knights Hospitallers of St. John of Jerusalem, the latter, whose hospitium in Smithfield already sufficed for their

We shall see hereafter how the first society became in course of time divided into the two societies of the "Inner Temple" and the "Middle Temple,"¹ which by Royal concession acquired the full proprietorship of the possessions of the Knights Templars.² The title-deeds

requirements, had no alternative but to let out what had been occupied by the Knights Templars, and within a very few years of the statute already referred to, *ante*, note 2, the *New Temple* was actually occupied by apprentices of the law—one of such famous apprentices being *Geoffrey Chaucer* himself, whose recollections of the days when he *kept his terms* in the Temple enabled him to speak of the profitable office of the Purveyor there more than five hundred years ago.

"A manciple there was of the Temple,
Of which all catours might taken eusemple,
For to been wise in buying of vitaille;
For whether he payed or tooke by taile,
Algate he wayted so in his ashate
That he was aye before in good estate.
Now is not that of God a full faire grace,
That such a leude man'a wit a shall paoe,
The wisdom of an heape of learned men.
Of mastera had he mo than thrice ten,
That were of law expert and curioua."

Prologue Cant. Tales, Manciple.

A more familiar story about the early residence of the apprentices of the law in the Temple is that of Wat Tyler's rebellion in 1381, when old historians speak of "*le Temple de Apprentices de la ley*," and when the chroniclers of the period record the mischief done to "*le Temple de Apprentices de la ley*," and how the mob "*aatis malitiose locum qui vocatur Temple-barr in quo apprenticii Juria morabantur, nobiliores deruerunt*."—Thomas of Walsingham *sub ann. 4 Ric. II.*, and Dugdale, *Orig. c. 57*, p. 145.

¹ The precise time of the separation of the apprentices of the Temple into two societies is not distinctly shown. Chaucer, who was himself a student in the Temple, it will be seen, speaks of "*the manciple (or steward) of the Temple*" *supra*; and in the accounts of the commotion in 1381 we find the rebels described as attacking "*le Temple de apprentices de la ley*," see *Dugd. 145*; but Dugdale gives us distinct lists of the Readers and Treasurers of the Inner Temple and the Middle Temple, commencing in 1503. See *Orig. Jur. 163*, 172–215, 221.

² The old armorial bearing (see *ante*, p. 142) of the Knights Templars, the horse carrying two of the order (an emblem of the poverty of which they boasted), was taken by the Society of the Inner Temple, the old

by which the Honourable Societies of the Inner and Middle Temple now hold their property are in print and of easy reference.¹

According to all reliable accounts the Society of Lincoln's Inn, in many respects the most prosperous of the Inns of Court, seems to have acquired its property and position at a later period than the others.

The first acquisition by the Society was by way of leases of a very ancient date from the See of Chichester, the owners of the freehold of the northern portion of this property; the Bishops of Chichester having had from the beginning of the thirteenth century the Inn or Palace there long known as *Chichester Inn*, but in aftertimes gradually given up to the use of the legal profession.

Ralph Nevill, Bishop of Chichester and Lord Chancellor in the time of Henry III., had acquired by grant from the Crown,² a portion of the property of the Old Temple,³

Templars' horse being adroitly converted into a Pegasus, and the lamb and flag of the Knights Hospitallers being adopted by the Society of the Middle Temple.

The expressions *Inner Temple* and *Middle Temple* suggest that there was at one time a portion of the old Knights Templars' abode called the *Outer Temple*. This Outer Temple seems to have extended as far certainly as Essex Street. It was from the time of Edward III. to that of Henry VI. the *Inn* or *Town residence* of the see of Exeter, until it successively belonged to Lords Paget, Leicester, and Essex.

¹ See Appendix to Report of Commission on Inns of Court, 1854, appendix 207.

² See Dugd. Orig. c. 64, p. 231, quoting Claus, 11 H. 3, p. 2, m. 7.

³ The actual extent of the Old Temple in Holborn, from which the Knights Templars removed to the New Temple, is nowhere distinctly described. The bar *veteris Templi*, London, seems to have marked the S.E. boundary of St. Giles in the Fields, and thus intersected a part of the present Lincoln's Inn, so that the Old Temple seems to have included at least the north-west portion of the Inn. The proprietorship of the "Old Temple," though not legally passing to the Crown by the removal of the Knights Templars to the New Temple in Fleet Street, seems to have been so treated by Henry III., when in 1227 he gave a portion of the Old

after its lapse by forfeiture in 1241,¹ and there the Bishop erected the noble palace where he died in 1244, according to Matthew Paris, "*per omnia laudabilis*,"² leaving his palace or hostel to his successors,

Temple for the hostel of the Bishop of Chichester, as had before been done with regard to another portion of the Old Temple for the hostel of the Bishop of Lincoln. See on this Rot. Claus. 1 Ric. 3, m. 100.

When it was finally arranged in the ensuing century that the Knights Templars' property should all go to the Knights Hospitallers of St. John of Jerusalem (see *ante*, p. 143), it became necessary to have this previous dealing of the Crown with the property of the Church rectified, and it seems clear the legal interest in the "Old Temple" as well as the "New Temple" was deemed to go to the order of Knights Hospitallers. If any proof were wanting on this point, so far as Lincoln's Inn is concerned, it is supplied by the deeds passing the property from the see of Chichester to the purchasers in trust for Lincoln's Inn in 1536, when the portion then purchased is stated to be held of the chief lords of the fee thereof, "*by the services therefor due and of right accustomed, to wit, of the Lord Prior St. John of Jerusalem in England, and his successors, by fealty of all services to be enacted and demanded.*" See the purchase deed from the Bishop, Dean and Chapter of Chichester, 1st July, 1536. The statutes afterwards passed for the dissolution of religious houses, 27 H. VIII. c. 28; 31 H. VIII. c. 28; 32 H. VIII. c. 20; 37 H. VIII. c. 4, would have required the title of the Society to be derived direct from the Crown, just as the New Temple was in 1313; see *ante*, p. 145.

¹ It had previously been granted to William de Haverhill, Canon of St. Paul's, the High Treasurer, on whose attainder in 1241 it reverted to the Crown.

² "*Venerabilis Pater Episcopus Cicestrensis Radulphus de Nevilla, Cancellarius Angliæ, vir per omnia laudabilis et immota columna in regni negotiis, fidelitatis Londini, in nobili palatio suo, quod a fundamentis, non procul a Novo Templo construxerat, cal. Feb. vitam temp. terminavit, perpetuum adopturus.*"—Mat. Paris, A.D. 1244.

This eulogium of Matthew Paris might suffice to avert, in the case of Ralph de Neville, the ingratitude of posterity.

Ralph de Neville, of noble birth, with genius and mental attainments which raised him to very high position in Church and State, and with noble liberality leaving his possessions for public purposes, ought at least to have escaped detraction at this distance of time.

The unenviable task of making out this founder of Lincoln's Inn not to have deserved the character of "*per omnia laudabilis*" devolved on a late Bencher of that Society, diligent in exemplifying Shakespeare's words—

"The evil that men do lives after them;
The good is oft interred with their bones."

Bishops of Chichester, who seem to have kept up *Chichester Inn* for many ages as their town residence or palace; and it could hardly have happened otherwise, seeing that two of Ralph Neville's successors in the Bishoprick rose, like himself, to be Lord Chancellor,¹ and other Bishops of Chichester had important duties to perform in London.²

De Neville, who became Bishop of Chichester in 1223, and was afterwards freely elected Archbishop of Canterbury but rejected by Papal authority, rose also to the highest position in the law, for he was Chancellor of England as well as Chancellor of Ireland.

He had been Chancellor of Chichester before he became the Bishop, and he had been the Vice-Chancellor of England for many years before he himself sat on the woolsack; and an old letter set forth by Lord Campbell shows that De Neville offended his predecessor De Marisco by being rather too eager to jump into his shoes. Lord Campbell, always shocked at the improprieties of his predecessors, tells us that "*notwithstanding the unscrupulous means he employed to advance himself, and the rapacity of which he was guilty, he is said to have made a good Judge.*"—'Lives of the Chancellors,' vol. i. ch. vii. p. 119.

Lord Campbell's imputation on the character of Ralph de Neville of *using unscrupulous means to advance himself* will hardly weigh against the positive testimony of Matthew Paris. Remembering how often in the 'Lives of the Chancellors' and the 'Lives of the Chief Justices' Lord Campbell's disparaging words have been aimed at his contemporaries as well as his predecessors, it is not surprising that we should find that the good name of De Neville does not escape. Lord Campbell was shocked at any of his predecessors using *unscrupulous means to advance himself*, and treating it as a reproach that Neville was *Chancellor of Ireland* as well as *Chancellor of England*, presents himself before all who remember his incessant manœuvres to secure his own aggrandisement in a light which the French call *bien drôle*.

¹ Ralph Neville sat on the woolsack from 1223, with some short interim, until his death in 1244; John Langton from 1306 to 1308, and at his death the next Bishop, Robert Stratford, became Lord Chancellor.

² In old times the Bishops of Chichester were confessors to the Queens of England.

On an inquisition made of the annoyances of London in the beginning of the fourteenth century, it is stated that a bar had been kept up for many years in Chancellors' Lane by the Bishop of Chichester, *whose house was there*. See Strype's Stow, lib. 4, p. 70, and *Chichester Rents and Bishop's Court* survive as evidence from the neighbourhood, of the old proprietorship. The chapel is dedicated to St. Richard, Bishop Neville's successor.

When
Lincoln's
Inn first
acquired.

At what precise time the lawyers got possession of the property is not distinctly recorded, but it seems clear that there were leases of this Inn before the time of Henry VI., from the Bishops of Chichester to the *apprentices of the law*, reserving a certain rent and lodgings for themselves on their repair to London,¹ and it is certain that these leases were from time to time renewed, till the property was sold by the Dean and Chapter of Chichester to the Benchers of *Lincoln's Inn* in the time of Henry VII.

Renewable
leases
granted by
Bishops of
Chichester.

These leases granted to the law students seem to have been renewed from time to time, as church leases in former days usually were, on payment of a premium, the old ground rent only being reserved.

Improvement
in
finances.

The financial position of the Society does not seem to have been very good until nearly the end of the fifteenth century;² but by that time their affairs seem suddenly

¹ Dugd. Orig. 231, where reference is made to the Register of Lincoln's Inn, vol. vi. p. 361a.

² Dugdale says he was unable to get any information about the affairs of Lincoln's Inn "till Henry the 7th's time; but in 6to of that King's reign, the Society getting in some money, partly by contribution, and partly by loans, within two years after (viz. in 8 H. 7.) they pulled down the old Hall, though they made no great haste in erecting a new one: for till 22 H. 7. (which was fourteen years after) I do not perceive it was finished: within the compass of which time, viz. in 13 H. 7., I find that John Nethersale (late one of the Society) bequeathed xl. marks; partly towards the building of a library here, for the benefit of the students of the laws of England; and partly, that every priest of this house, then being, or hereafter to be, who should celebrate mass, and other divine service every Friday weekly, should then sing a mass of requiem; and also in the time of the said mass, before his first lavature, say the psalm of 'de profundis,' with the Orizons and Collects accustomed, for the soul of the said John."

"But this good work of the Hall being perfected, they were drawn on further, for the next ensuing year (viz. 23 H. 7.) they began to make brick, and to contract with masons for the stonework of another fabrick, viz. the great Gate-house Tower; unto which Sir Thomas Lovell, formerly a member of this Society, but then treasurer to the household to King

to have improved, great credit being given to some of the *Governors* or Benchers, amongst whom was *Fortescue*, whose writings are so often referred to on the subject of the Inns of Court.¹ Not many years after, among the names of the Benchers appear those of several of the family of *Sulyard* or *Syleard*,² through whose aid, as the affairs of the Inn improved, the Society was enabled to acquire the freehold, after a succession of rather complicated arrangements—and further to purchase two of the lesser Hostels or Inns of Chancery.³

The property of this honourable Society in a comparatively short time became greatly increased in value. The Inn of the Bishop of Chichester, with its garden and *conygarth*, or rabbit warren,⁴ was in the reign of

Henry the 7th, was a good benefactor; fetching their timber by water from Henley upon Thames. And in 24 H. 7. they finished the library.”—Dugdale, p. 232.

It was under Lovell's direction that the gate-house was built and the arms placed thereon of *Lacy*, Earl of Lincoln, as well as his own.

¹ Selden says that Lincoln's Inn chiefly grew up in Henry VI.'s time, when Fortescue, one of the greatest glories of it, was Chancellor; note (a) to p. 110 of Fortescue *De laudibus legum Angliæ*, c. xlix.

² Dugdale refers to some of these leases; one taken in the name of Francis Sulyard, expiring in 1536, was renewed in the names of William and Francis Syleard for 99 years at a rent of £6 13s. 4d. What premium was paid for the renewal is not stated, but within twelve months the then Bishop of Chichester, with the assent of the Dean and Chapter, conveyed the fee simple to William Syleard and Eustace his brother, whose heir-at-law, in 1580, at length conveyed it in fee simple to Richard Kingsmill and the rest of the then Benchers.—Dugd. 231.

³ Furnival's Inn and Thavie's Inn.

⁴ The southern portion of Lincoln's Inn, known formerly as *Ficquet's Field*, was in the seventeenth century the property of Sir John Birkenhead, who devised it to his executors, Sir R. Mason and Mr. Serjeant Bramston, for sale and payment of his debts. The purchaser, Mr. Henry Serle, engaged in building speculations, and having built eleven large houses fit for lawyers' chambers, appears to have died in such embarrassed circumstances that satisfactory arrangements were easily made for the acquisition of the property by the Society of Lincoln's Inn, and Ficquet's Field, under its new name of Serle's Court, became, after the lapse of many years, New Square, Lincoln's Inn.

Henry VIII. and afterwards, used to a certain extent for building, and by the time of Queen Anne a very valuable acquisition was made. The land on the south of the old Inn, with the houses already erected on it—indeed all that is now called New Square, Lincoln's Inn—became, by a fortunate arrangement, the property of the Society of Lincoln's Inn, and it would seem that the property of this Honourable Society is now equal to that of the Inner Temple.¹

Gray's Inn. The fourth of the *Inns of Court*—Gray's Inn—was from the time of Edward II. to that of Henry VII. the property of the Grays, or De Greys, of Wilton, and seems to have been actually used as the *hostel* or *Inn* of that noble house for a very long time. It formed part, if not the whole, of the ancient manor of Pourtpool or Portpole, which extended into what is now called Kentish Town. In 1506 Edmund Lord Grey sold the family interest in this manor of Portpole, otherwise Gray's Inn,² and it came into possession of the law students, who afterwards constituted the *Society of Gray's Inn*.³

Traditions
as to early
history.

Such is the history of the property of the Inns of

¹ See Report of the Commissioners on the Inns of Court, 1855, p. 6. In the appendix to this report the principal muniments of title of the Inns of Court are fairly set out.

² By an indenture of bargain and sale 12 Aug. 21, H. 7, Edmund Lord Grey of Wilton conveyed in fee to Hugh Denny and others the manor of Portpole, otherwise Gray's Inn, consisting of four messuages, four gardens, the site of a windmill, eight acres of land, ten shillings of free rent and the advowson of the chantry of Portpole, which by regular licences to alien in mortmain became the property of the Prior and Convent of Shene, who demised it to the students of the law at a rent of £6 3s. 4d., which was duly paid up to the time of the dissolution of monasteries, when it was regranted to the Society by the Crown.—Dugd. Orig. c. 67, p. 272.

³ Dugdale gives extracts from the records of the Augmentation Office, in Nov. 6, Edw. 6; and the rules as to religious services by the Dean of the Chapel.—Orig. 285.

Court. The records and muniments of title are for the most part sufficiently distinct. Though the books in neither of the *Inns* go beyond the time of Henry VI.,¹ we are able to trace back the history of the two Societies of the Temple to the time when the order of the Knights Templars was destroyed in the early part of the fourteenth century, and the two other Societies at all events date back from the time of Henry VI.; but with pardonable rivalry the *ancients* of these two learned Societies seem to have vied with one another in their search for a longer pedigree, and setting up *traditions* from ages yet more remote, giving to them a much earlier history.

There has been just sufficient want of precision, about names and places and dates, in reference to the early history of the Inns of Court, to admit of conjecture being occasionally substituted for proof, and the *fond traditions of the ancients* of these time-honoured institutions must therefore be received not only with all proper respect, but with caution.

The *traditions of the ancients* of the two honourable and learned Societies of Lincoln's Inn and Gray's Inn handed down at all events from the days of Dugdale, make out that those institutions had even then already existed and flourished for three hundred years;² but

¹ The first of the books of Lincoln's Inn goes back to 1423, of the Middle Temple to 1501, of the Inner Temple to 1506, and of Gray's Inn to 1514.

² Dugdale gives as the tradition of Gray's Inn "that the students of the law held this house by lease from the Lords Gray of Wilton in King Edward the Third's time and since," Orig. Jur. c. 67, just as the tradition is current amongst the Lincoln's Inn ancients that Lacy, Earl of Lincoln, about the beginning of King Edward the Second's time, "being a person well affected to the knowledge of the lawes, first brought in the professors of that honourable and necessary study, to settle in this place"; but Dugdale adds, "direct proof thereof from good authority I have not as yet seen any."—Orig. Jur. c. 64, p. 231.

for all this there is, as Dugdale says, "no good authority," and indeed the so-called traditions are opposed to proved facts.

When
Gray's Inn
first occu-
pied by
lawyers.

Gray's Inn (the old manor of *Portpole*), was not only the property but made the regular residence of the Greys of Wilton until towards the end of the fifteenth century, when it was sold by Edmund Lord Grey; and in Dugdale we find the record of the arrangements made for the conveyance of the property by the Grey family to Hugh Denys, and Serjeants Dudley, Pigot, and Broke, and Ernley, the Solicitor-General, for the use of the prior and monks of Shene, in order to be let to the students at law;¹ and there seems good ground for assuming that the students at law had come to occupy the place at *that time* instead of in the reign of Edward III.

Tradition
as to the
Earls of
Lincoln.

The tradition of Lincoln's Inn with reference to the Earls of Lincoln seems to have far less foundation than that of Gray's Inn and the apprentices of the law in the time of Edward III. *The Earls of Lincoln seem never to have been really identified with the Society of Lincoln's Inn.*

Henry de
Lacey.

The famous Henry de Lacy, Earl of Lincoln, no doubt had a mansion near the northern portion of the present Lincoln's Inn, but there is small proof either of his having made it his fixed abode, or of any part of it being used by the law students. The Inn or residence of De Lacy, Earl of Lincoln, seems to have been built many years *after* the establishment of the *Bishop of Chichester's Inn* in the neighbourhood. Though not the Earl's ordinary residence, De Lacy died there in

¹ See the documents set out in Dugdale.—Orig. Jur. 272.

1310,¹ and his fame was great,² but amongst the records of his life we have no mention of his Inn, or tidings of anything belonging to it, except an account of the profit and loss on the produce of the Earl's garden,³ and after his death all he possessed passing to his daughter and heiress, the Countess of Lancaster, there is no more recorded of *that Lincoln's Inn*.

There seems certainly less reason to connect the Lincoln's Inn of our day with the house occasionally occupied so long ago by *Henry Lacy, Earl of Lincoln* than with *the Inn of the Bishops of Lincoln*.⁴

¹ What was the actual site of the *Earl of Lincoln's Inn* does not very clearly appear. Dugdale was unable to give an exact account of it.—Orig. Jur. c. 64, p. 231. This Earl had a grant from the Crown, in 1288, of the old house of the Black Friars, which they had recently vacated, on the *north-west side of Chancery Lane*, and next to the Inn or house of Ralph of de Neville Bishop of Chichester (see Stow, 164); and as the Bishop of Chichester had already occupied his house long before the Earl's time, and continued to hold and occupy it for ages afterwards, it seems more probable that the house where the Earl of Lincoln lived and died was beyond the bounds of the property of the Bishop of Chichester, which is now called Lincoln's Inn.

² In old St. Paul's, between the Lady Chapel and St. Dunstan's Chapel, there was a monument erected to Henry Lacy with his effigy in full armour, cross-legged like a Knight Templar, but as Stow tells us, the monument was greatly defaced.

³ In the office of the Duchy of Lancaster is an account rendered by the bailiff of this Earl of Lincoln, of the profits arising from and the expenditure upon the Earl's garden in Holborn, fourteen years before his death. See Archæological Journal, December, 1848, showing how it produced not only pears, large nuts, and cherries in sufficient quantities to supply the Earl's table, but also to yield a considerable profit by their sale. See Archæological Journal for 1848. The circumstance of this curious account being found in the Office of the Duchy of Lancaster is to be explained by the then close connection between the houses of Lancaster and Lincoln.

⁴ Robert de Chesney, *Bishop of Lincoln*, built his Inn for the see of Lincoln in 1147, near the place now called Southampton Buildings. This Inn of the Bishops of Lincoln was for ages their only town residence. The list of these Bishops includes eight Lord Chancellors, and the Great Seal would thus be kept at the *Bishop of Lincoln's Inn* ages after all trace of the *Earl of Lincoln's Inn* was lost.

A record of 1483, speaking of John Russell, Bishop of Lincoln, and then

The fond tradition of the old members of the Honourable Society of Lincoln's Inn to associate the name of the famous Earl of Lincoln with the institution of their Inn must be taken into account. We are told this induced the students of the fifteenth century to insist on the Inn being called by no other name, *whatever proofs might be adduced one way or another*. The ancient coat-of-arms of the Society¹ was gradually cast aside² and from 1515 to the beginning of the last century the coat of Lacy, Earl of Lincoln, was used on all occasions for the armorial bearings of the Honourable Society of Lincoln's Inn—an absurd mistake which the Benchers were at last in 1702 induced to rectify at the instance of Sir Richard Holford, one of the body, who succeeded in convincing his colleagues of its impropriety, and at the same time putting some check on the conceit of future Treasurers.³

Lord Chancellor, tells us that the Chancellor having there received the Great Seal from the King carried it to *his Inn called the Old Temple*, in the parish of St. Andrew, Holborn, and that on the 20th June following he sat, there assisted by Morton, the Master of the Rolls, and three Masters in Chancery.—Rot. Claus. 1 Ric. 3, m. 100.

¹ Azure, semé de molines *or*.

² In 1518 the members of the Society with the substantial aid of Sir Thomas Lloyd Lovell, built the gate-house in Chancery Lane, and conspicuous on this have ever since appeared the three several coats-of-arms of Henry VIII., Lacy, Earl of Lincoln, and of the assiduous courtier, Sir Thomas Lovell himself. When the Hall was finished thirty years afterwards, we are told by Dugdale that the tower at the top was carefully decorated on the outside in lead with the much-loved arms of "Lacy, Earl of Lincoln," which, as he states, with Quincey, and the Earl of Chester's coat, were still to be seen.—Orig. Jur. 232.

³ At a council of the Hon. Society of Lincoln's Inn, held on the 27th January, anno 1700, "Sir Richard Holford, Knight, acquainted the masters of the bench that the coat of armes now used, being a lion rampant *purpure* on a field *or*, is not (as he is informed) the proper coat of armes of this Society, but belongs to the family of Lacy Earle of Lincoln; and by an ancient manuscript in the library it appears that in 1516 the coat of armes of this Society is *azure* semée de molines, *or*, on a dexter canton

Thus it will be seen the institution of the Inns of Court originated in and grew up by voluntary action

Inns of
Court
voluntary
societies.

or, a lion rampant *purpure*; and comparing it with books in the Heralds Office, this seems to be the proper coate of armes of this Society: whereupon it was on the 22nd day of November last ordered in Councill—

“That the said Sir Richard Holford be desired to gett an authentick certificate from the Herald’s office of the armes of this Society. And the said Sir Richard Holford now reporting to the Councill that he had applied himself to the Herald’s office, and had obtained an authentick certificate, by a table wherein the said coate is handsomely depainted, attested by Mr. Gregory King, Lancaster Herald, and placed in a frame; which he now produced; whereupon it is ordered, That the coate of armes above mentioned be hung up in the Councell Chamber for one year, and then hung up in the library, and there preserved.”—Extract from the orders of Council of Lincoln’s Inn, copied into Lane’s Guide through Lincoln’s Inn, p. 21.

At a Council held at Lincoln’s Inn, 28th January, 1702, it was ordered “that the coats of armes, names and years of every Benchers officiating the place of Treasurer of this honourable Society be put up in the east window of the Chapel, over the communion table, and that the arms of the house as blazoned in Gwillims heraldy be placed in the middle window above them all; and *that coat only to be used hereafter in all matters concerning the house*; and that for the future *no Treasurer’s arms nor names be put up in any other place.*”

This useful provision of the Benchers of Lincoln’s Inn might with great advantage have been imitated by the other Societies. In more than one instance in the Inns of Court are very ostentatiously displayed, the *names and coats of arms of the Treasurer of the year* in which some special building was completed or restored, with no apparent purpose whatever except that of gratifying the personal vanity of the possessor of the name and arms, not only at some expense to the Society in point of money, but to their discredit in point of taste.

The wits of the Inns of Court have sometimes in a playful mood revenged themselves on these conceits. An inscription on a renovated building having some years ago appeared with the grand words “*restoravit et adornavit—Thesaurarius,*” a junior scribbled underneath, “*impensis suis.*” The Treasurer thus corrected had the inscription altered into “*Restorata et adornata—Thesaurario.*”

Probably in these days it would not be practicable on the rebuilding or renovating portions of an Inn of Court for the Treasurer to imitate Sir Thomas Lovell, by foolishly displaying his *own arms on the gateway*, but we have record of conceits approaching that of Lovell. The Middle Temple gateway, taken down in 1684, had on the outside Cardinal Wolsey’s hat, badge, cognizance, and other devices set up in 1515 in a very glorious manner by Sir Amias Pawlet, an involuntary lodger over

and private co-operation. These *Inns* are designated in a sort of *return* made to Henry VIII.¹ as “companies or fellowships of learning,” and have been over and over again declared by the Judges in Westminster Hall to be voluntary societies, not liable, like corporations, to be ordered and directed by the ordinary process of the Courts.²

Opinions of
Lord Coke
and Lord
Mansfield.

We shall see how the powers of these *voluntary societies* with respect to the Bar can be regarded as an anomaly. We may certainly rely on Coke’s assumption that no such institutions could be upheld by a modern title,³ and Lord Mansfield’s assurance that such powers as the Inns of Court possess over the Bar, they have really derived from the Judges.⁴ These powers have so rarely been called in question that they may justly be regarded as not unwisely placed.⁵

Whilst almost every other collegiate institution in this country is regulated by prescribed legal provisions, express statute, or governing charters, the Inns of Court,

the gateway from 1515 to 1521, dancing attendance, as it is said, on the Cardinal, with reference to an awkward incident of his younger days; and Pawlet’s ornamentation of the Temple gateway was intended as incense to appease the proud Wolsey’s ire. With a humour superior to Lovell’s or Pawlet’s, and in proud defiance of accuracy as to time or place, the enterprising tradesman whose hair-cutting saloon is over the *Inner Temple gateway*, invites custom by a bold notice in large letters that it was “*formerly the Palace of Henry VIII. and Cardinal Wolsey.*” See *post*, p. 168, note 3.

¹ On a field or a lion rampant *purpure*.

² See Cotton Records, Vitellius C 9.

³ *Rex v. Gray’s Inn*.—Dougl. 354.

⁴ Per Lord Mansfield, *ib*.

⁵ At a well-attended meeting of the Bar in the Inner Temple Hall on Saturday, 5th May, 1883, a committee was formed for devising a more effectual protection of the Junior Bar. This movement seems to have originated in no antagonism to the Benchers on any of the matters to be discussed. What will come of it has yet to be seen.

founded on and fostered by no royal bounty or state concession,¹ have lived for so many centuries, honourable and learned Societies, the only recognised guardians of the honour and independence of the English Bar, practically exempted from the orders, jurisdiction, or interference of the Courts, and allowed to constitute, on all occasions of dissension or irregularity, a sort of domestic *forum*, whose conduct has in almost every known case been fully acquiesced in as *lawful and right*. The decisions of the Courts at Westminster² with reference to the Inns of Court have always been based on the presumption that such institutions are in

Exempt
from juris-
diction of
the Courts.

¹ The recital of the patent of James I. in reference to the Temple, refers to the property as being "two out of those four colleges the most famous of all Europe, as always abounding with persons devoted to the study of the law, and experienced men, have been by the *free* bounty of our Progenitors Kings of England for a long time limited to the use of the students and professors of the said laws," etc.—Letters Patent of the Inner and Middle Temple to Sir Julius Cæsar and others, 13th August, 6 Jac. I., set out in Report of Commissioners on Inns of Court, 210, Appendix B. This free bounty of King James really consisted in a title derived, not from King James's Royal Progenitors, but from ecclesiastical leases renewed from time to time for good consideration, and on which Sir Julius Cæsar and others had also for good consideration laid out their money in building. See Dugd. 147.

In like manner Lincoln's Inn was derived by private purchases from the Bishops of Chichester through the Sulyard family for valuable consideration to all concerned, see *ante*, p. 149; and the same kind of dealing took place with regard to the acquisition of Gray's Inn.

In neither case was there really much *royal bounty* to speak of, or dealings very materially different from those so commonly effected by virtue of the combinations of church leases and building leases.

² *Rex v. Gray's Inn*, 1 Dougl. Rep. 354, was a case where a student who had kept his terms at Gray's Inn applied to the Benchers to call him to the Bar, but the Benchers refused him on some exceptions to his private character. He then applied for a mandamus, and the Court of King's Bench refused to interfere, Lord Mansfield observing that "though the original institution of the Inns of Court nowhere precisely appears, it is certain they are not corporations, and are without charters from the Crown, being voluntary societies which for ages have submitted to government, analogous to that of other seminaries of learning."

a legal sense *voluntary societies*, over which the ordinary tribunals have no jurisdiction, as in the case of corporations or colleges.¹

How far
this an
anomaly.

This remarkable feature in the constitution of the Inns of Court is no doubt to a great extent anomalous, and if it has rarely produced the usual evils of anomalous institutions, it is only fair to attribute this happy escape to the prudent conduct of these honourable and learned societies in the management of their affairs, and the maintenance of government and discipline.

Various
Ordinances
as to the
Inns of
Court.

Sir William Dugdale has carefully compiled from various sources full information as to orders and regulations in any way relating to the Inns of Court, their order of government, and duties and powers, both in regard to legal education, the admission and rejection of members, and the preserving proper discipline among them; and none of such regulations dates back beyond the seventeenth century. No ordinance with reference to these institutions emanating from the Crown or the Privy Council, the Judges or the Benchers, has an earlier date than the reign of Philip and Mary;² and the Inns of Court are not even mentioned in any Act of Parliament before the next reign.³ There is no

¹ See *Rex v. Benchers of Lincoln's Inn*, 4 B. & C. 855.

² See these set forth in Dugdale's *Orig. c. 64*, p. 343; *c. 70*, pp. 310—321. The *Catalogus Gubernatorum*, in the first volume of the *Registry of Lincoln's Inn*, begins in 1425, 3 H. 6, an evident *compilation* of much more modern date; for there is continually a blank for the christian names, even that of Fortescue not being given. The same volume of the Register gives the oath of admittance, and the oath of the Governors under the date of 1439, 18 H. 6, which seems on the face of it to have been *then* first introduced. See Dugd. 342. The list of Readers begins in 4 Edw. IV., and is as defective as that of the Governors.

³ 5 Eliz. c. 1, which, enumerating persons required to take the oath of supremacy, includes persons "taking any degree of learning in or at the common laws of this realm, as well Utter Barristers as Benchers, Readers,

reference in any law report before that time, to the Inns of Court as legally constituted institutions;¹ and a sort of return made to the Crown in the time of Henry VIII. on this subject seems very distinctly to show that there was not any reliable previous account of the Inns of Court or their system of rule.²

Return
temp.
H. VIII.

The classification of the Inns, their division into *greater and lesser houses*, and *houses of Court and houses of Chancery*, certainly formed no part of the older system of the *hostels* of the apprentices of the law, which were all known alike as *Inns or houses of Court*.³

Classifica-
tion as
Inns of
Court and
Inns of
Chancery
modern.

It is long after the complete establishment of the Inns of Court—long subsequent to the days of Fortescue—that we hear of any settled order among them—any distinction between *greater and lesser houses*, or the division into or classification of *Inns of Court* and *Inns of Chancery*. The *four houses of Court* and the *houses*

or Ancients in any house or houses of Court;” and directs the Act to be read once every year in all the Inns of Court and Chancery.

¹ The Judges' and Serjeants' remarks, referred to *ante*, p. 136, about l'apprentices dans les hostels, temp. Edw. III., can hardly be cited to prove that the Inns of Court were then legally regarded as of much importance or consideration.

² In the Cott MS. Vitellius C 9, pp. 319b-321b, is the description given to Henry VIII. “of the Inns of Court and the manner of study and preferment therein.” This MS. was much damaged in the fire that took place some years ago, but Dugdale, p. 193, gives all that relates to the Middle Temple. It is not easy to make out, from what remains of the MS., what this information was as to the other Inns. See also Faustina, E. V. 29.

³ The mootings and readings were from the first chiefly held in the lesser Inns, where the Juniors of the Bar of the days of Edward III. are recorded to have sometimes propounded rules of law which served to amuse if not to instruct the graybeards of the coif. See Year Book, 29 Edw. III., fol. 47b. In the report these Inns are called *hospitia curiæ*, and Coke tells us how Thavie's Inn, then a house of Chancery, had been from an early date a *house of Court*, wherein the apprentices of the law were wont to dwell.—10 Coke, Rep. xxiii.

of *Chancery* are made the subject of express regulation by the Privy Council and Judges in 1557, 1559, and 1574;¹ but except these orders, and the return, already referred to, in the time of Henry VIII., we have really very little proof of the actual constitution of the Inns of Court even at this period: and we have simply nothing to rely on as to their previous state, except the very questionable chapter in the work *De laudibus legum Angliæ*, published after that period on "the four famous Colleges," presented to the reader as if actually forming part of the work written by Chief Justice Fortescue in the days of Henry VI.,² though the account thus given of the Inns of Court bears on the face of it evidence of being composed just before the date of publication and many ages after the days of Fortescue; containing statements that Fortescue could not have made, *e.g.* as

Account in
the treatise
De laudi-
bus legum
Angliæ.

Accuracy
of account
then given.

¹ "Orders made and agreed upon to be observed and kept in all the four Inns of Court," 22nd June, 3 & 4 Philip and Mary.—Dugdale's Orig. Orders made All Souls' Day, 1 Eliz. Orders necessary for the government of the Inns of Court established by commandment of the Queen's Majesty with the advice of her Privy Council and the Justices of her Bench, and the Common Pleas at Westminster in Easter Term, 16 Eliz. 1574, set out in Dugdale's Orig. 311-312.

² The first appearance in print of the work '*De laudibus legum Angliæ*' was in the time of Henry VIII., when copies of the writings of Chief Justice Fortescue were in much request, and there were said to be copies in "*divers hands.*" An edition in 16mo. by E. Whitchurch is spoken of early in this reign, and in 1599 Robert Mulcaster published an English translation. An early editor speaks of the treatise having "long lain hid in obscurity under a bad translation and other imperfections."—Pref. to ed. of 1741, p. 3. There are MS. copies with other titles, *e.g.* *De legibus et consuetudinibus Angliæ* and *Bibl. Cott. Otho E. 12*; and Waterhouse, one of the editors, boldly asserts that the copy he had was actually transcribed by Sir Adrian Fortescue on paper containing a great variety of chapters.—Waterhouse, 215. Looking to the fact that the modern version of Fortescue is so little to be relied on, we may take the liberty of rejecting most of the observations on the chapters on the Inns of Chancery and the Inns of Court, as spurious additions made more than a century after Fortescue's death.

to the number of the Inns,¹ and their use as places of abode,² of study and of diversion ;³ but the accounts quite accord with the days of Elizabeth and Chancellor Hatton.

In the case of the Inns of Court, as in other institutions, their ascendancy was heard rather by a continued course of wise policy, than by any strict legal right or express concession. The twelve grand livery companies for ages counted only as so many out of the eighty or ninety guilds in the City of London ; but when in course of time these thriving societies distanced their competitors in the race for superiority, they were received at Guildhall as *the wisest and most sufficient of the mysteries*.⁴

Ascend-
ancy of the
greater
Inns, pro-
gressive.

¹ Though this chapter (49) speaks distinctly of "ten lesser Inns," and sometimes more, called the Inns of Chancery, and the Inns of Court *properly so called, four in number*, yet the previous chapter speaks of there being *one place of study* "a private place separate and distinct by itself, in the suburbs near to the Courts of Justice."—48, p. 109. In Fortescue's time there could only be three greater Inns: the Society of the Middle Temple was not in existence, the division of the Temple into Inner Temple and Middle Temple not having been made till the time of Henry VII. See *ante*, p. 144. The account of the lesser Inns, too, is certainly not in accordance with the state of things in the time of Henry VI. either as to the number of the houses or their subordination to the Inns of Court.

² About the very time that Fortescue wrote the actual abode of the apprentices of the law seems to have been more in the lesser Inns than Lincoln's Inn or the Temple. When in 1454, 32 Hen. VI., one of the many Town and Gown riots occurred, a conflict between the Inns of Court men and the citizens of London, during which there was serious mischief, we find that members of Clifford's Inn, Furnival's Inn, and Barnard's Inn were called to account, and the Principals of those three Inns sent to prison, but no mention is made of the Temple, Lincoln's Inn or Gray's Inn.

³ "There is, both in the *Inns of Court and the Inns of Chancery*, a sort of an academy or gymnasium fit for persons of their station, where they learn singing, and all kinds of music, dancing, and such other accomplishments and diversions, which are called *Revels*, as are suitable to their quality, and such as are usually practised at Court."—Fort. De laud. leg. Angl. c. 49, p. 3.

⁴ See Herbert's *History of the City Livery Companies*, London, 1838, and 2nd Report of the Municipal Corporation Commissioners.

The Inns of the apprentices of the law in like manner seem long to have remained on an equal footing. The old established hostels, the houses of Chancery as they came to be called, had comparatively humble accommodation, but ranked equally with Lincoln's Inn and Gray's Inn; and neither in those two learned institutions, nor in the Temple, does there seem, until the sixteenth century, to have been any recognised pre-eminence or precedence of one Inn over another, or any special privilege legally conferred on the members of any of the Inns, or any special powers on their governing bodies; but when in the course of time the fortunate occupiers of the Temple and the two other great Inns flourished, we find them recognised as "the four most famous colleges of law," taking the exclusive title of *Inns of Court*, and having the lesser Inns subjected to their dominion and control.¹

Absence of
records.

The sixteenth century was the real period when the Inns of Court were first regularly constituted, there being no books, or records, or reliable chronicles showing that there were before that period,² even in the greater Inns, either governors, treasurers, or readers,³ or indeed any regular order of government.

¹ See *post*, p. 180; and Dugd. Orig. 322.

² See *ante*, p. 151. Writers on legal antiquities constantly refer to the destruction of the old records of the Inns of Court by fire and robbery; and special reference is made to the mischief done by the rebels in the time of Richard II. See p. 163. Though these lawless men, however, may really have made a bonfire in the Temple, as Shakespeare depicts, in 1381, and burnt all the records *then existing*, we have from that time a whole century during which there is no record in either of the Inns in any way relating to their affairs. There does not appear to be a single reliable record of the Inns of Court of the days of Richard II., Henry IV., or Henry V., or even Henry VI., or for several ages *after the calamity referred to*.

³ See *ante*, p. 150. In Lincoln's Inn and the Temple the earliest appointments were of *Governors*, the catalogue beginning in the Temple in

Before the sixteenth century neither of the four Inns of Court *really belonged* to the societies of the students or apprentices of the law, either as owners or even as sole occupiers. They were held on a somewhat precarious tenure, involving various obligations and liabilities, together with rent and other charges, the real owners having not only the power to evict, but right of residence whenever required for themselves, treating the apprentices of the law more as lodgers than ordinary tenants.

Precarious tenure of Inns of Court.

Inns of Court not exclusively occupied by the lawyers.

The Knights Hospitallers kept up their abode in the Temple for ages after the lawyers had their lodgings there,¹ and the *new Temple* seems to have been up to the time of the dissolution of the monasteries, the headquarters of the master of the order,² who kept up a large establishment there as well for religious purposes,³

1506, and Lincoln's Inn as early as Henry VI., though imperfect. See Dugd. Orig. 172, 257. The chief officer in the Middle Temple and Gray's Inn was always the treasurer, the earliest Middle Temple entry being in 1501, see Dugd. 221, whilst no such officer was appointed in Gray's Inn until 1531, when we find a distinct entry of Will. Walsingham *primus Thesaurarius*.—Dugd. Orig. 298, quoting ex Registro Hosp. Grayensis, vol. i. fol. 115a.

¹ The Knights Hospitallers, as well as their predecessors the Knights Templars, seem to have kept up their stately abode, the New Temple, with no niggard hand. It was here that Royal visitors were entertained, and sometimes a Parliament held, and when the rioters devastated the New Temple in 1381 we are assured very soon after by a reliable authority, Thomas of Walsingham, that it was done, not as the popular story had it, to spite the lawyers, but the unpopular ecclesiastics who were the lords of the place, "*satis maliciose etiam locum qui vocatur Temple barr, in quo apprenticii juris morabantur nobiliores diruerunt ob iram quam conceperant contra Robertum de Hales Magistrum Hospitalis Sancti Johannis.*" Thomas of Walsingham, in an. 1381. Dugd. Orig. 145.

² Records of the date of Henry VII. show that there was then a regular establishment of priests in the Temple, with the hall and lodgings assigned to them. See Dugdale, Orig. 173.

³ The clerical establishment of the Master of the Temple, long after the dissolution of the monasteries, consisted of four stipendiary priests and a clerk. See Stow's Survey, p. 440, 762-3.

as not unfrequently in order to entertain the *grandees* of the land.¹

Lincoln's
Inn occu-
pied by
Bishops of
Chichester.

The Inn of the Bishops of Chichester, long known as Chichester Inn² before it got the name of Lincoln's Inn,³ seems to have been the Bishops' ordinary town residence, and to have been so used until 1536, when, having granted to the law students a long lease, the Bishops at last parted with their entire interest.⁴

Gray's Inn
by Lords
Grey of
Wilton.

The Lords Grey de Wilton kept up Gray's Inn, with its belongings, the manor and chapel of Portpole, until the beginning of the sixteenth century; there being, as it seems, small accommodation for the apprentices of the law until 1507, when the Society acquired the property from the Prior and Monks of Shene, who purchased it from the Grey family.⁵

¹ In the famous scene in the Temple Gardens in Shakespeare's *Henry VI.*, the *grandees* of the two factions of the *Roses* appear to have had command not only of the garden, but the hall.

"Within the Temple hall we were too loud;
The garden here is more convenient."

First Part of King Henry VI., act ii., sc. 4.

² See *ante*, p. 149. The "Chichester" Inn is referred to in numerous records going back to the days of Edward I., when John Briton, Custos of London, interfered with the obstructions and annoyances caused in the road to the *Bishop's Inn* called *Chancellor's Lane*.

³ Lacy, Earl of Lincoln, died in 1310, in a mansion he had himself built in or near the Bishop of Chichester's land.

⁴ There were leases from the Bishops of Chichester to the students of the law, reserving rent and *lodgings* for the Bishops, on their repairing to London: and one of these leases (granted temp. Henry VII. to Francis Sulyard) only expired in 1535, when it was renewed by a lease to William Sulyard, also a Bencher, for 99 years, see Dugd. 231; and by subsequent arrangements made through the Sulyard family, who had bought up the interest of the Bishop of Chichester, the *Inn* became the freehold property of the Society under the name of *Lincoln's Inn*, to hold of the Lord Prior of St. John of Jerusalem, chief lord of the fee by the services thereupon due and of right accustomed. See the copy of the deed, Report Commrs. Inns of Court, 242.

⁵ The deeds, which are dated 1506-7, and set out by Dugdale, show

According to the doubtful version already referred to, of the chapter "on the Inns of Court" in the treatise de laudibus legum Angliæ, there were even in the time of Henry VI. upwards of eighteen hundred students in the various Inns;¹ but this account serves to confirm the doubts of the accuracy, and indeed the authenticity, of this chapter as Fortescue's own writing. There were not such a number even in Coke's time;² and a reliable writer in the latter part of the reign of Elizabeth shows from the books of the Inns that there could not have been before that time a third of the number spoken of in the edition of Fortescue;³ and so late as 1596 there was so little room for the members already admitted that it was necessary to prevent new admissions in any of the Inns of Court until chambers were vacant.⁴

Number of
members of
Inns of
Court.

the conveyance to Hugh Dennys and others as trustees for the *Society of Gray's Inn*. The trustees do not seem to have been members of the Society of Gray's Inn. Serjeant Pigot, from the Inner Temple, and Serjeant Brooke, from the Middle Temple, being two of them.

¹ "There belong to it (the legal university) ten lesser Inns and sometimes more, which are called the *Inns of Chancery*, in each of which there are an hundred students at the least, and in some of them a far greater number, though not constantly residing . . . after they have made some progress here and are more advanced in years they are admitted to the Inns of Court properly so called; of these there are four in number. In that which is the least frequented there are *about two hundred students*. Fort. c. xlix. 3 Rep. Pref.

² See Ferne, *Glory of Generosity*, p. 24, Lond. 1586, and Dugd. Orig. p. 143. The first printed edition of Fortescue was about the same time. See Preface to 2nd ed. p. 52.

³ Imprimis that no more in number be admitted from henceforth than the chambers of the house will receive *after two to a chamber*, nor that any more chambers shall be builded to increase the number, saying that in the Middle Temple they may convert their old hall into chambers not exceeding the number of ten chambers. "Orders necessary for the government of the Inns of Court established by commandment of the Queen's Majesty with the advice of her Privy Council and the Justices of her Bench and Common Pleas at Westminster, ann. 16 Regina Elizabethæ 1574."

⁴ At Serjeants' Inn 20th of June, 38 Eliz., agreed by all the Judges, by the assent of the benchers of the four Inns of Court, that hereafter none

Accommodation for law students in Inns of Court.

It seems clear that previous to the legal arrangements of the beginning of the sixteenth century, the Inns of Court had neither of them accommodation for the permanent abode of any large number of apprentices of the law. If we look even at the map of London published at the beginning of the reign of Elizabeth, we shall see how small a portion of the present area of the Inns of Court was then at all built on. Immediately adjacent to the highway of Holborn will be observed in these maps the hall and contiguous buildings; of Gray's Inn on the north side, and the hall gateway and other buildings in Lincoln's Inn on the south; but these buildings in Lincoln's Inn and Gray's Inn hardly include a fiftieth part of the area of either Inn; the rest of the area consists of mere fields, or garden-land, or avenues of trees just as they were when the ancient lordly or ecclesiastical owners were the occupiers. The same remark will apply to the Temple. The old map shows the gates, the church, and the old hall, with some very limited range of adjacent tenements; but the proportion of uncovered ground is quite as great as in the two other *Inns*.

Old buildings in the Temple.

Progress of building in the Inns of Court.

The account we have of the course of building in the Inns of Court serves to show how very recently, in comparison with the received dates of the settlement there of the several societies of lawyers, proper accommodation was made for their reception—how very few *chambers* there were in the Temple or Lincoln's Inn in the time of Henry VIII., or even of Elizabeth¹—how

should be admitted into Inns of Court till he may have a chamber within the house and in the meantime to be of one of the Inns of Chancery."

¹ See *ante*, pp. 148, 158.

distinctly the work of building is to be traced to a date long subsequent.

In the Temple, with the exception of the church, the cloisters, the hall, and other ecclesiastical or monastical structures, there was at the time just referred to hardly a building of any large dimensions. There really was none of any long standing, throughout the Inn. There was indeed at that time the most scant houseroom for the members, the poorest accommodation for the purposes of legal study or legal practice. The *Round* of the Temple church, like the Pervis of St. Paul's,¹ was for ages professionally resorted to and used both by students and practitioners of the law.² From the old maps as well as from other proofs there does not appear to have been a single building south of the terrace from Whitefriars to Essex House;³ for it must be remembered that it was hardly practicable to build below that line until 1525, when the river wall was first made.⁴ Long after that time the course of building operations was but slow. We hear of *Pakington's* rents,⁵ as well as Barington's

Slow progress of buildings in the Temple.

¹ See *ante*, p. 3.

² The legal meetings and attendances and consultations, in the "*Round*" of the Temple Church are referred to by Ben Jonson in the '*Alchemist*,' and Samuel Butler in '*Hudibras*,' part 3, c. 3.

The old cloister walks and their use by the students, for legal disputations, or "putting cases," and the policy of rebuilding them after the fire of London, are referred to by Reger North, '*Life of Guilford*,' vol. i. 27.

³ The old map already referred to distinctly shows this. From Whitefriars Gate to Arundel House in the Strand there is not a single building below the line of the Inner Temple Hall, whilst there is open space immediately above the Hall, and Elm Court still marks where the large trees grew, and the rookery that lasted to the days of Goldsmith.

⁴ "The wall betwixt the Thames and the garden was begun in 16 H. 8, Mr. John Pakington (afterwards Serjeant-at-law) and Mr. Rics being appointed overseers of the work."—Dugd. Orig. 146, quoting Reg. Int. Templ., vol. i. fol. 68 b.

⁵ "Serjeant *Pakington* was Treasurer here in 20 H. 8, and caused the Hall to be seeled. He also built divers chambers between the Library and

rents and Bradshaw's rents, called after Treasurers of the time of Henry VIII., but it was not till the seventeenth century had begun that any considerable progress had been made, the place properly enclosed, and a system of building under a *sort of building lease* introduced. At the end of Elizabeth's reign, when the Temple Gardens were enclosed,¹ we hear of rough lodgings being provided for the students between the church and Hall² by Sir Julius Cæsar, who was then Treasurer, and a few years after was instrumental in obtaining the grant of the Temple from James I. The present Inner Temple gate only dates back to 1610,³ soon after which the chambers in Inner Temple Lane and other building operations were carried out.⁴

Babington's rents (built not long before), and gave ten pounds to the treasury ; for which respect it was ordered by the Society, February 1534, that those new chambers should be called *Pakington's rents*. The lodgings in that court now known by the name of Tanfield Court (by reason of Sir Lawrence Tanfield, Chief Baron's residence there) were first erected by Henry Bradshaw, Treasurer, in 26 H. 8, whence they were long afterwards called Bradshaw's rents."—Dugdale, 146.

¹ "In 31 Eliz. two sides of the gardens were enclosed with a brick wall, and the postes whereon the 12 celestial signes are placed, then set up, Robert Golding being at that time Treasurer."—Dugd. 147.

² "In 38 Eliz. there were divers lodgings in rough-cast work built between the church and the Hall on the east part of that court. Towards the charge thereof Sir Julius Cæsar, then Master of the Rolls, gave £300, in consideration whereof he had power to admit any gentleman into the Society during his life : which buildings are still called Cæsar's Buildings."—Dugd. 147.

³ "In 8 Jac. John Benet, Esq., then one of H.M.'s Serjeants at arms, built the gate called the Inner Temple Gate."—Dugd. 147, quoting from the Register of the Inn for 1610. The rooms over this gateway, which are elaborately ornamented, have long been used with great advantage for a hair-cutting saloon, and large letters on the outside tell the visitors that it was the *palace of Henry VIII., and Cardinal Wolsey*—an opposition story to that fastening on the old gate of the *Middle Temple* about Cardinal Wolsey and Sir Amias Paulet. See *ante*, p. 156 and *post*, p. 169.

⁴ Dugd. *ib.*, e.g. King's Bench Walks, Paper Buildings, and Crown Office Row were all built about this time.

If we turn to the Middle Temple we find the famous Hall built by Plowden in 1562-1572, and various sets of chambers built within the century ensuing; but previous to the building of the Middle Temple Hall the Lawyers seem to have had there but a scant supply of chambers or lodgings.¹ The gateway from the Middle Temple into Fleet Street, fantastically ornamented by Sir Amias Paulet in 1516,² appears as the chief structure formerly existing.

Middle
Temple
buildings.

The accommodation for Barristers or law students in *Lincoln's Inn*, before or since it acquired that name,³ seems to have been even as little provided for as in the Temple. The building of the gatehouse, in the time of Sir Thomas Lovell, is said to have taken up thirteen years⁴ and the erection of the hall and chapel many more, but the work of providing chambers or lodgings for the Barristers or students was apparently disregarded. The old maps show no buildings at all, except the north

The
chambers
in Lincoln's
Inn.

¹ The return made to Henry VIII. as to the Middle Temple stated that there were no lands nor revenues belonging to the house, Dugd. 193; and speaks of the Treasurer gathering a tribute or pension of 3s. 4d. a head, and the value of certain chambers or lodgings, to pay the rent of £10 due to the "*Lord of St. John's*," and the wages of officers and servants, which then amounted to about the same sum. See Dugd. p. 196.

² The accounts of this gateway vary. The old story makes out that Paulet, against whom Cardinal Wolsey had an ancient grudge, was an involuntary occupant of the Temple, and having assigned to him as his residence the gateway of the *middle* house, he set to work to rectify and improve it, and, by way of a peace-offering to Wolsey, he decorated the outside with the Cardinal's hat and coat-of-arms, etc., and other devices, which Wolsey's biographers especially mention. As a fact the famous decorator of the Middle Temple gateway was at the time *Treasurer* of the Society. He appears in the *Catalogus Thesaurariorum* as *Amistus Poulet Miles*, 12 H. 8. See Dugdale, Orig. 221. The gate with its quaint decorations continued up to Dugdale's time, but it was pulled down in 1684, and the present gate substituted.

³ Vice Chichester Inn, Haverhill Inn, etc. See *ante*, p. 164.

⁴ 23 Hen. VII. till 12 Hen. VIII.—Dugd. 232.

end of the Inn. The part now called Old Buildings dates back only to 1602. The rest of the *Inn* consisted of garden or grass land with plenty of trees, and, as it would seem, a good supply of rabbits.¹ The larger part of that now built on was most of it acquired at a much later date.²

Gray's Inn. Long after its being counted among the *four famous Inns of Court*, Gray's Inn seems to have afforded but poor lodging accommodation for the members and students of the law. Dugdale describes the chambers as ill-constructed, slender, mean, and disagreeably incommodious;³ and even up to the time of Bacon we hear less of the amelioration of this state of things than of Bacon's work of planting elm-trees, and laying out the walks and gardens.⁴

¹ The conveyance of the Inn by the Bishop of Chichester to the Sulyards in 1536 describes it as "all that great messuage *commonly called* Lincoln's Inn, with the courts and curtilages, gardens and the garden called the *connygrath* formerly called the Cotterell garden." Deed poll from Richard Bishop Chichester to William and Constance Sulyard, dated 1 July, 28 Hen. VIII. set forth in Appendix to Report of the Inns of Court Commissioners of Inquiry, p. 242; and the students attending the readings were by old orders strictly prohibited from *hunting or shooting the rabbits*.

² The New Square was acquired by means of purchase from the Serles in 1682. See *ante*, p. 149, n. 4.

³ Even the ancients of the house were necessitated to lodge double; for at a pension held here 9 Julii, 21 Hen. VIII., John Hales, then one of the Barons of the Exchequer, produced a letter directed to him from Sir Thomas Nevile to acquaint the Society that he would accept of Mr. Attorney-General (viz. Sir Christopher Hales) to be his bed-fellow in his chamber here, and that entry might be made thereof in the book of their rules.—Orig. c. 67, p. 273.

⁴ "I next come to the walks, which are very large and beautiful. Of these the first mention that I find is in 40 Eliz. Mr. Bacon (viz., he who was afterwards Sir F. Bacon Knight Lord Verulam and Chancellor of England) having upon his account made in 4 Jac allowed the summe of £7 14s. to be laid out for planting elm trees in them, of which elms some died as it seems; for at a pension held here 14 Nov. 41 Eliz. there was an order made for a present supply of more young elms in the places of such

Sir E. Coke¹ describes the ordinary gradation of members as first *Mootmen* or Students;² secondly, *Utter Barristers*;³ thirdly, *Ancients*;⁴ fourthly, *Readers* and *Double Readers*;⁵ and fifthly, the *Serjeants-at-law*, the *King's Serjeants*, and the *Judges*.⁶

Classification of members.

as were decayed; and that a new rayle and quickset hedges should be set upon the upper long walk at the discretion of the same Mr. Bacon and Mr. Wilbraham: which being done, amounted to the charge of £10 6s. 8d. as by the said Mr. Bacon's account allowed 29 April 42 Eliz. appeareth."—Reg. Hosp. Grayensis, vol. 1, fol. 246 a, quoted by Dugd. Orig. 273. Verulam Buildings were erected more than two centuries after Bacon's death.

¹ 3 Co. Rep. Proœm.

² *Mootmen* are those that argue *Readers'* cases in the houses of Chancery, both in Terms and in Grand Vacation.—8 Co. ib.

* Out of the *Mootmen*, after eight years' study or thereabouts, are chosen *Utter Barristers*.

The status of *Utter Barrister* could be obtained even up to the end of the sixteenth century in the lesser Inns or Inns of Chancery, as well as in the greater Inns. Thus it was provided by orders made at Lincoln's Inn in 1568 that the *Utter Barristers* of Furnival's Inn of a year's continuance, and so certified and allowed by the Benchers of Lincoln's Inn, shall pay no more than four marks apiece for their entrance into that Society.—Dugd. c. 65, p. 276, quoting Regist. 5, Hosp. Linc. fol. 8. And by an entry made in the same Register in the next year of the rules of *Furnival's Inn*, it is provided that every fellow of this Inn, *who hath been allowed an Utter Barrister here* (Furnival's Inn) and that hath mooted here two Vacations at the *Utter Barr*, shall pay no more for their admissions into the Society of Lincoln's Inn than 13s. 4d., though all *Utter Barristers* of any other house of Chancery excepting Thavies Inn should pay 20s.—21 Jac. 1, c. 23, s. 6.

⁴ Out of *Utter Barristers*, after they have been of that degree twelve years at least, are chosen Benchers or *Ancients*.—3 Co. Proœm.

⁵ Of the *Ancients*, one that is of the puisne sort reads yearly in Summer Vacation; and one of the *Ancients* that hath formerly read, reads in Lent Vacation, and is called a *Double Reader*, it being commonly between his first and second reading about nine or ten years: out of which *Double Readers* the King makes choice of his Attorney and Solicitor General, his Attorney of the Court of Wards and Liveries, and his Attorney of the Duchy.—Ib.

⁶ "Of these *Readers Serjeants* are elected by the King; and out of these the King electeth two or three as he pleaseth to be *his Serjeants*; and out of these are the *Judges* chosen."—Ib.

In each of the Inns of Court this classification seems to have been nearly as Coke describes it, viz. beginning with the Juniors, came first the ordinary members of the house, the Students or Mootmen,¹ sometimes called *Gentlemen under the Bar* or *Inner Barristers*, corresponding with the undergraduates of the Universities; secondly, those of eight years' standing who had performed the prescribed exercises, *passed the Bar*, and become *Utter Barristerii* or *Apprenticius ad Barros*, corresponding with University graduates.

The ruling
body in the
Inns of
Court.

How the ruling body in the Inns of Court was originally constituted does not very distinctly appear. In all of them, as in the case of the old guilds and fraternities, seniority or *ancientry* doubtless afforded the ordinary qualification for a seat on the Bench, or place of authority; and the *position of Ancients* in this respect may be easily traced back in the books of the various Inns, the title "Principal and Ancients" belonging, as it would appear, to the ruling body in all the Inns, as it has continued to this day in the lesser Inns.²

¹ Coke describes Mootmen as those that argue Readers' cases in the houses of Chancery both in Term and Grand Vacation.—3 Rep. Preface. By the arrangement of the halls of the four of the Inns of Court there seem formerly to have been three distinct divisions. The lower part was environed by a bar of wood or iron below which came the ordinary members, the students or mootmen, who were called sometimes *Under Barristers*, sometimes *Inner Barristers*.—Dugd. 243. The second part of the hall was reserved for those who after sufficient standing in the lower grade were *called to the Bar*, and thenceforward denominated *Utter Barristers*. The higher division was on a raised floor and bench, where sat the ruling body, the Governors, Readers, Ancients, and other *Benchers* of the Inn, with the Serjeants clect who had writs to be called to the Coif, but were not yet created Serjeants. Whilst the last, therefore, had the highest place, and the Utter Barristers came next, the junior position was that of *Under* or *Inner Barrister*, whose place was *within the Bar*, in exactly an opposite sense from the *calling within the Bar* of the Courts.

² The constitution of the Inns of Chancery was always made up of the *Ancients* and Students or Clerks, the Principal or Treasurer being yearly

Such appears certainly from old records to have been the legal description of the ruling bodies of Gray's Inn,¹ as well as of the Middle Temple; and the position of the *Ancients* is certainly recognised at all events in the records of all the Inns.²

In Lincoln's Inn and the Inner Temple we find, up to the early part of Elizabeth's reign, two, three, or more annually appointed *Governors*,³ but the offices or places of *Benchers* or *Masters of the Bench* probably existed at the same time with that of *Governors*: for the *Benchers* of all the four Inns are spoken of in the "orders for the regulation of the Inns of Court and Chancery," at a much earlier period.⁴ The Benchers seem to have consisted of those who had served the office of *Reader*,⁵ or those *seniors* among the Utter

Governors
and
Benchers.

chosen from the *Ancients*; and in 1488 the Principals of Clifford's Inn, Furnival's Inn, and Barnard's Inn, were all summarily dealt with for a tumult between the gentlemen of the Inns of Court and the citizens. See Dugdale, Orig. Jur., 310.

¹ The inheritance of Staple Inn is stated in the Gray's Inn Register to have been granted in 1529 to the *Ancients* of Gray's Inn, who from time to time passed the freehold to other *Ancients* their successors; e.g. Sir Francis Bacon, Lord Verulam and others, as such *Ancients*, so passed the inheritance in 1622. See Dugd. Orig. c. 68, p. 310, quoting Reg. Hosp. Grayensis, fol. 218.

² Each of the four greater Inns has for many ages in all formal proceedings been described as if incorporated, the constitution of the Society not being stated, e.g. "The Honourable Society of the Inner Temple" included the whole body of members. In old times a different rule prevailed. "The Honourable Society of Gray's Inn" is described as of "the Benchers, Ancients, Barristers, and Students of Gray's Inn." In the Middle Temple the term "*Ancients*" applied to those who by seniority should have been chosen "*Readers*," but were not so elected.

³ The *Catalogus Gubernatorum* of Lincoln's Inn, which is very imperfect, commences with a few names, temp. Hen. VI. and ceases in 17 Eliz., when the number was thirteen, and then these names reappear as Benchers. See Dugd. 261. The Inner Temple Cat. Gub. extends from 21 Hen. VII. to 8 Eliz., and the number never exceeds four.—Id. ib. 172.

⁴ See orders temp. Philip and Mary.

⁵ See Dugdale, Orig. 193, quoting Cotton MS. 320, Vitellius C. 9. In

Barristers who had been excused from the labour of reading, and got the name of *Ancients*.¹

Place of
meeting.

Different designations describe the assembly of the ruling body of the various Inns. The meeting of the Benchers and Ancients of Gray's Inn has been always called a *Pension*.² In Lincoln's Inn the Benchers' meeting is called a *Council*, whilst in the two Inns of the Temple the assembled Masters of the Bench constitute a *Parliament*, the ordinary place of meeting being called the *Parliament Chamber*.³

1558 an order was made that every man called to the Bench of the Inner Temple, should keep some learning vacations both after his calling to and coming to the Bench. The *Catalogus Gubernatorum Hosp. Int. Temp.* given by Dugdale begins in 1506 and ends in 1566, when the title of *Gubernatores* gave way to that of Benchers.—Dugd. Orig. c. 70, p. 315.

¹ The "Ancients" of the Inns of Court form the subject of one of the essays in Charles Lamb's 'Elia.' In "The Old Benchers of the Inner Temple" he pictures a number of eccentric characters, describing the pomposity of Thomas Coventry, the *pensive gentility* of Samuel Salt, and of a contemporary who, as Lamb tells us, was subordinate to them, "Daines Barrington, another *oddity*," burly and square, in imitation of Coventry. "When the account of his year's treasurership came to be audited, the following singular charge was unanimously disallowed by the Bench: 'Item disbursed. Mr. Allen, the gardener, twenty shillings, for stuff to poison the sparrows by my orders.'" Some account of Mr. Daines Barrington has already been given. See *ante*, p. 29.

² The Principals and Ancients of New Inn call their meetings *Pensions* and their place of meeting Pension Rooms. The name Pension is also the designation of the Inns for the annual payments of members of the house to the Inn, and members when in arrear for pensions are by the old orders liable to peremptory legal proceedings, and when the pension writ has been issued members were to be excluded from commons till payment of the arrears of pensions.

³ These distinctions between the deliberative assemblies of the different Inns were formerly very strictly observed; e.g. the Orders of the Privy Council in 1664 for the government of the Inns of Court and Chancery, providing "none to be called to the Barr by Readers, but by the Bench at *Parliaments Councils* and *Pensions*."—Orders 18 June, 16 Car. 2, § 7.

See Crompt. Jur. 1.

The meeting in Common rooms in convents was called *Parliamentum*. Matt. Paris speaks of the Abbot of Croyland as in the habit of calling a Parliament of the monks to consult about the affairs of the monastery.

The number of Benchers does not appear to have been fixed by any order or rule. The course, no doubt, as old members died or ceased to belong to the Inn, was to advance all the *Readers* and *most deserving of the Ancients*, or perhaps those who had most influence.¹

Election
of new
Benchers.

The Bench was thus in each of the Inns of Court in due order filled by those who were *Readers*, or had performed the exercises of learning belonging to that office. The titles *lector* and *duplex lector* seem to attach to the majority of the names in the old lists. These were also admitted with the *Ancients* of the Inn, who were excused from filling the office of Reader; but it was a well-settled rule that any Serjeant elect or member of the Inn who received a writ to become Serjeant, whether or not at the time Reader or past Reader, took his seat on the Bench immediately on receiving his writ,² and continued *Benchers* till the return of the writ³ and the ceremony of the creation

Call to the
Bench on
receipt of
Serjeants'
writ.

At one time the call to the Bar was by the Readers immediately after the moots.

¹ Francis Bacon was elected Bencher of Gray's Inn in February, 1586, at the age of 26; but then Lord Burleigh was his uncle. He had been made an Utter Barrister in 1582, before his proper time; but one of the most famous of former Treasurers of the Inn was Sir Nicholas Bacon, who, we are told by a quaint old writer, was "a man of a gross body, but of great acuteness of wit, of singular wisdom, of great eloquence, of an excellent memory, and a pillar as it were of the Privy Council. *He was, in a word, a father of his country and of Sir Francis Bacon.*"—David Lloyd, *State Worthies*, 472.

² With regard to the call to the Bench of the Inn, it was quite immaterial whether or not the Serjeant elect was about to be made Judge.

³ "If any member of this house receive a Serjeant's writ, he is then forthwith placed at the upper end of the Bench table above all other Readers, as being a Serjeant elect, though not complete; and notwithstanding such his writ he continues still a Bencher and in commons until the day of solemnity and receiving of the Coif."—Dugd. Orig. 211.

This was the case in the Middle Temple, where the first four on the list of Readers are recorded as Serjeants, Dugdale, 215; and it clearly was

of Serjeants being completed, he was admitted to one of the Serjeants' Inns, and then left the Inn of Court in due state and form, to return on all grand occasions as a visitor or guest of the house.¹

The call to
the Bench
of Queen's
Counsel.

The King's ordinary Counsellors in the law, in addition to the King's Serjeants, e.g. the Attorney- and Solicitor-General, the King's Attorney of the Court of Wards and Liveries, the King's Attorney of the Duchy of Lancaster, etc., were probably from the first made Benchers of their Inns, if not already so qualified by having been *Readers*; and Dugdale's *Catalogus Lectorum* of each of the four Inns certainly contains the names of men holding these and other high law offices.² But as will be seen hereafter, the "Queen's

the general practice. Thus Dugdale gives from the *Catalogus Lectorum* of Gray's Inn, 1577, the name of Rob. Shute, *duplex Lector, electus quia ad gradum Serj. ad legem vocatus*, Orig. Jur. 294, and in 1580 Thomas Snagg under the same circumstances. Previous to the 59 Geo. 3, c. 113, enabling the Crown to create Serjeants-at-law in Vacation, the writ was always returnable on some day certain in Term. See form, *ante*, p. 32.

¹ This seems clearly to have been the recognised rule. The ancient practice of the Inns of Court presenting a purse or glove of money by way of *honorarium* or *de riguardo* to the Serjeant elect, and taking part in the ancient ceremonies observed at his creation, is thus explained by Dugdale:—

"When any Serjeant-at-law of this Society (the Middle Temple) is made a Judge, he is accompanied to Westminster Hall by all the fellows of the house, as being a fellow member with him: and being a Judge, the Bench resort unto him often times for his advice and assistance in matters touching the governance of the house."—Dugd. Orig. 211.

The ancient observance of the retaining *donant* of the new Serjeant-at-law is kept up in some of the Inns of Court to this day. See Report of Commissioners of Inns of Court, 1853, Appendix, p. 236-7.

² There are a number of instances in Dugdale: and in 1552 we find as the Treasurer elected for Gray's Inn, the name of Bacon's father, 'Nich. Bacon, arm. Attornatus Dom. Regis in curia sua Wardorum.'—Ib. 298.

Many of the Treasurers and Readers are described as being subsequently *de Concilio Reg. in partibus Borealibus*. We need hardly suggest that there is no pretence for mistaking these for *Queen's Counsel* in the North.

Counsel," in the modern sense of the term, were not then known.

The practice just referred to of at once calling to the Bench of the Inns of Court the law officers of the Crown on their being appointed, seems at various times to have caused much trouble. In the case of the first patent of King's Counsel, no question of admission to the Bench arose. Sir Francis Bacon had already been a Bencher of Gray's Inn eighteen years before he got his patent as one of H.M.'s Counsel. In the second instance, however, the case was different. Francis North, unlike Francis Bacon, was not already a Bencher when in 1668 he obtained his patent to be one of H.M.'s Counsel, and at the Parliament of the Middle Temple the Benchers demurred to his claim to be admitted among their number. Those were not times when it was thought wise for the Bar to act in opposition to the King's patent, or the King's Judges, and the Benchers of the Middle Temple, we are told, were severely reprimanded in Westminster Hall by the Judges, *who refused to hear any of them in Court until they had elected Mr. North.*¹

Claim of
Queen's
Counsel
to be
Benchers
de jure.

¹ Roger North gives us an account of this incident in his brother's career in his usual style. He says, "The rulers of the Society called Benchers refused to call his Lordship after he was King's Counsel, up to the Bench; alleging that if young men by favour so preferred, came up straight to the Bench, and *by their precedence stopped* the rest of the ancient Benchers, it might in time destroy the government of the Society. Hereupon his Lordship forebore coming into Westminster Hall for some short time, hoping they would be better advised; but they persisting, *he waited upon the several Chiefs, and with modesty enough acquainted them with the matter, and that as to himself he would submit to anything: but as he had the honour to be H. M.'s servant he thought the slight was upon the King, and he esteemed it his duty to acquaint their Lordships with it, and to receive their directions how he ought to behave himself, and that he should act as they were pleased to prescribe. They all wished him to leave this matter to them, or to that effect. The very next day in Westminster Hall when any of the Benchers appeared at the Courts they*

The Judges having resorted to this lawless expedient, the Benchers of the Middle Temple gave in, and Mr. North was duly received as one of the Masters of the Bench.

Rule as to
Queen's
Counsel
being
elected to
the Bench.

It at length became the practice at each of the Inns of Court, for every Barrister, as soon as he obtained a patent to be one of H.M.'s Counsel, to send his patent to the Treasurer of the Inn; and up to the year 1845, it was the custom to elect the newly-made Queen's Counsel as one of the Benchers at once. The number of Queen's Counsel had enormously increased, there being, in fact, no limit to the number, no prescribed qualification for the appointment;¹ and the Bench table of two at least of the Inns of Court was almost exclusively occupied by gentlemen thus eligible. In the words of a late Vice-Chancellor, "the multitudinous and indiscriminate creation of Queen's Counsel has made the number of Benchers in the two most considerable of the Inns of Court too unwieldy for the proper government of those Societies."²

Mr. Hay-
ward's
case.

At length, in 1845, a gentleman belonging to the Inner Temple, of unquestionable character and social position, having obtained H.M.'s patent creating him "*one of her Counsel* learned in the law," applied to the Benchers of the Inner Temple to admit him to the

received reprimands from the Judges for their insolence; as if a person whom his Majesty had thought fit to make one of his Counsel Extraordinary was not worthy to come into their company; and so dismissed them unheard, with a declaration that until they had done their duty in calling up Mr. North to their Bench, they must not expect to be heard as Counsel in his Majesty's Courts." This was English; and that evening they concurred, Mr. North was made a Bencher, and the Judges were appeased.

¹ See *post*, p. 202.

² Reply of Vice-Chancellor Stuart, Inns of Court Report, 202.

Bench, and on their refusal appealed to the Judges at Serjeant's Inn. The Judges after fully hearing the case, dismissed the appeal, holding that it was entirely with the Benchers to choose who should be called to the Bench.¹

The Inns of Court being legally deemed voluntary societies,² and the ruling body being, as we have seen, in a manner self-elected, without any vote on the part of the ordinary members or their having any voice, the Benchers seem always to have been subjected to supervision and control on the part of the Judges. In the oldest records we have of any appeals from the acts of the Benchers, the appeal was not to the whole Judicial Bench, but only to those who previously had been members of the particular Inn about which the matter in dispute arose, but gradually the tribunal came to consist of all the Judges of the Coif, being usually confined to the Judges of the Common law Courts;³ and this domestic

Benchers
subject to
control.

¹ See Report of the proceedings before them as Visitors of the Inns of Court on the appeal of A. Hayward, Esq., Q.C., privately printed and published. London: Benning & Co., 1848.

² See *ante*, p. 128.

³ It never included any others, e.g. the Equity Judges, etc. What may be the course to be taken in future may be a question.

The practice of making the tribunal of appeal from the decision of Benchers consist of the Judges that had been members of the Inn immediately concerned, seems to have prevailed certainly till the end of the seventeenth century.

In January, 1689, Mr. Fry, an Ancient of Gray's Inn, having been passed over in the call to the Bench, applied to Chief Justice Holt, Baron Nevile, Mr. Justice Gregory, and Baron Newton, who were all Judges taken from *Gray's Inn*, and complaining that he had been *pretermitted* in two several calls to the Bench wherein several of his puisnes had been called, and his subsequent application for admission refused; and the *Visitors* having met at Chief Justice Holt's, rejected Mr. Fry's appeal on the ground that the power of Benchers was discretionary. A contemporary book in Gray's Inn containing an entry of this proceeding was used by Serjeant Talfourd in Mr. Hayward's case.—Report, p. 89.

forum has sufficed in most cases to ensure justice being really done, whether the controversy has been about the conduct of individual members of the Inn, or the action of the Benchers in questions of election, or in the management of affairs of the Inn.

Control
over the
Inns of
Chancery.

The regulations of the *Inns of Chancery* are far away from the subject of this work. These *hostels* doubtless once formed part of the general system of the Inns of Court. We have seen how closely their history is connected; and if we turn to the sixteenth century, when the greater Inns rose to the rank of the "four most famous Colleges," we shall see that it was solemnly ordained that the Inns of Chancery should be subject to the rule and government of the Benchers of the Inns of Court;¹ but this rule and governance of the lesser Inns seems very soon to have been found impracticable. There is little trace of any exercise of the Benchers' power over the Inns of Chancery, even with reference to the ancient moots and exercises; and it must now suffice to refer to the Report on the Inns of Court in 1855 to show that the control of the Inns of Court over the Inns of Chancery is now become mere matter

¹ "1. That the Innes of Chancery shall hold their Government subordinate to the Benchers of every of the Innes of Court to which they belong: and that the Benchers of every Innes of Court make Laws for governing them; as to keeping Commons, and attending and performing Exercises according to former usage: And in case any Attorney, Clerke, or Officer of any Court of Justice, being of any of the Innes of Chancery, shall withstand the directions given by the Benchers of the Court, upon complaint thereof to the Judges of the Court in which he shall serve, he shall be severely punished, either by forejudging from the Court, or otherwise as the case shall deserve.

"2. That the Benchers of every Innes of Court, cause the Innes of Chancery to be surveyed, that there may be a competent number of Chambers for Students; and that every year an exact survey be taken, that the Chambers allotted for that purpose, be accordingly employed." See Dugd. Orig. Jur. p. 322.

of history. The Report of the Inns of Court Commissioners shows that the old Inns of Chancery have long ceased to be merely legal institutions, and are now claimed altogether as private property belonging to private associations.¹

¹ See on this subject pp. 259, 260, 261, of the Report on the Inns of Court, 1855.

CHAPTER VI.

THE BAR OF THE COURTS AND THE RULES AS TO
AUDIENCE AND PRECEDENCE.

Variety of meanings of "Bar" and "Precedence."



THE words "Bar" and "*precedence*" have in the English language, and especially in legal phraseology, on different occasions, both of them very different if not altogether opposite meanings: so much so as to create confusion, not only among the uninitiated, but apparently sometimes even among the *learned in the law*.

With regard to "*precedence*," it is hardly surprising that misunderstandings have arisen, when we see how eagerly claims of that

character have generally been put forward, how unwarrantable, if not frivolous, sometimes are their grounds, and how frequent the mistakes they have given rise to.

Mistakes as to Bar and Barristers, etc.

Legal writers seem to have fallen into some confusion, not only with regard to *precedence*,¹ but many other matters affecting the profession. The whole topic of the Bar indeed, with its memorable history and belongings,

¹ 1 Bl. Com. 273. "Granting place or precedence to any of his subjects as should seem good to his royal wisdom," quoting 31 Hen. VIII. c. 10.

seems constantly to have given occasion to very remarkable mistakes, hardly warrantable in lawyers, however excusable in the case of the mere tyro, puzzled by the strange vicissitudes of meaning in legal expressions such as "Trial at Bar," "Called to the Bar," "Prisoner at the Bar," "Gentlemen of the Bar," "Utter Barrister," "Inner Barrister," "Within the Bar," "Under the Bar," "The Side Bar,"¹ etc., and much more so puzzled by expressions being used to convey two meanings—not only quite distinct, but exactly opposite, such expressions having generally very distinct derivations, e.g. the *barres* in the old halls of the Inns of Court and the *bar* of the Courts of Law.

From old time in the Inns of Court the *Utter-Barrister* was the advanced apprentice of the law, who had passed the *barre* of the hall of his Inn² and become one of the *apprenticci ad barros*,³ or Gentlemen of the Bar: whilst the Junior class, or Students,⁴ were kept *within the barre*

Utter
Barristers
and Inner
Barristers
of the Inns
of Court.

¹ Rules of Court obtained by attorneys without counsel had the name of *Side Bar Rules*, because they were in ancient times applied for at the Side Bar of the Court. Roger North speaks of the *Side Bar* as the place where the Judges heard the Attorneys' wrangle about matters of practice.—'Life of Guilford,' p. 240.

² "Utter-Barristers are such that for their learning and continuance are called by the Readers to plead and argue in the said house doubtful cases and questions, which among them are called *Motes*, at certain times propounded and brought in before the said Benchers or Readers, and are called Utter-Barristers, for that they, when they argue the said notes, sit uttermost on the formes, which they call *the Barr*."—Return made to Henry VIII. by Denton, Nicholas Bacon, and Cary, set out in Waterhouse's note to Fortescue, 543-4.

³ *Ante*, p. 119.

⁴ "All the residue of learners are called *Inner Barristers* which are the youngest men, that for *lack of learning and continuance* are not able to argue and reason in their *motes*." Waterhouse in Fort. *ut infra*.

It is quite unnecessary to suggest that gentlemen practising "under the Bar" as Special Pleaders have not in our time been noted "*for lack of learning and continuance*," or for not being able to argue and reason moot points.

and denominated *apprenticii infra barras*, *Inner Barristers*, or *Gentlemen under or below the Bar*¹—a designation applied to them even when, after years of study, they practised as Draftsmen, Conveyancers, or Special Pleaders.²

On the other hand, by a curious transition, the expression “within the Bar,” obtained in Westminster Hall and elsewhere, out of the Halls of the Inns of Court, an exactly opposite meaning—the more advanced of the apprentices of the law being in due form called from the *Outer Bar*, by special favour,³ and generally referred to in the Courts as the *Gentlemen of the Inner Bar*, whilst those not so distinguished or privileged had been usually called the “Gentlemen of the Outer Bar.”⁴

Within the
Bar at
Westmin-
ster Hall,
etc.

¹ “Inner Barrister” and “Student” are used as synonymous in all the old orders relating to the Inns previous to the 17th century, e.g. the orders of the Privy Council and Judges, E. 16 Eliz. 1574; Dugd. Orig. 312; 3 Rot. Parl. 58a, 583a.

² The *apprenticii infra barras*, though precluded from appearing as advocates at the *Bar of the Courts*—see *post*, p. 187,—seem formerly to have been under no restriction as to setting up as *men of law*: and *common assurances*, written pleadings, and other legal papers generally were drawn by such junior members of the Inns. The Stamp Acts of the beginning of this century imposed an annual tax on certificates of members of the Inns of Court so practising.—44 Geo. III. c. 99; 55 Geo. III. c. 184, Sched., Part I.; and *certificated Conveyancers*, etc., being occasionally complained of, especially by the Solicitors, as sometimes very objectionable competitors for professional business, the rule which now prevails was made in all the Inns, restricting members from so practising until actually qualified to be called to the Bar, and a select number of *Gentlemen below the Bar* now only appear in the Law List as so certificated.

³ “The Benchers also do come within the Bar at the chapel of the Rolls, and sit there promiscuously amongst the *Serjeants-at-law* and the *King’s and Queen’s Counsel learned*. They are likewise heard by the Master of the Rolls, in course, and before all Utter Barristers, *being called in by him* from the Utter Bar, so soon as he first hath notice of their being called to the bench in their respective Societies.”—Dugd. Orig. 210. It is hardly necessary to say that the *King’s and Queen’s Counsel* here mentioned by Dugdale were the King’s Serjeants and the King’s and Queen’s Attorneys-General, etc. “King’s Counsel” of the modern grade were not known till long after that time. See *post*, p. 189.

⁴ See *post*, p. 215.

The existing usages of precedence and preaudience at the English Bar are not of great antiquity. The Royal mandate by which the Attorney-General was the appointed head of the English Bar really dates back only to 1814.¹ The system by which special privileges of audience and place at the Bar have been personally given to about 200 Barristers by royal patents, is even of much more recent growth, though the system commenced with *the patents from the Crown made in the days of the Stuarts*. If we go back beyond these remarkable innovations we find a very different order of precedence and preaudience at the Bar.

Existing rules of preaudience, etc., not very old.

The actual *bar* of the Courts, of which we have already spoken, and which, like the *barre de Palais de Justice*² in France, gave a designation to the whole order of advocates, appears formerly to have been always sufficiently distinct: and the rules and observances relating to its custody in old times were very strictly enforced—the ancient office of Keeper of the Barre or *Usher*, being one of no small importance;³ and it is remarkable that to this day in both Houses of Parliament the words “Bench” and “Bar” have to a great extent the same meaning as when the High Court of Parliament constituted the *Curia Regis*, with its different

The barre of the Courts.

¹ See *ante*, p. 42, and the Order of Precedence, 14th December, 1814, which after reciting that the Attorney- and Solicitor-General then had *place and audience in the Courts* next after the two ancientest of the King's Serjeants-at-law, ordered that thereafter the Attorney- and Solicitor-General should have place and audience before all the King's Serjeants.

² The old French word *barre* was regarded as “*terme de Palais*,” and had nearly the same meaning as in Westminster Hall. The President or head of the Bar in France was described as *hors ligne*.

³ See as to these old offices and the appointment of Marshals, *Ushers*, and *Barriorum*, *ante*, p. 30 and notes. Like the *Huissiers* of the French tribunals, the Ushers were entrusted with the custody of the *bars*, and the keeping good order in Court during its sittings.

Benches,¹ and the suitors or applicants for justice, or the accused offender, came, with their Counsel *standing beside them*,² to be heard *at the Bar*; this *bar* being always on such occasions drawn out with great ceremony,³ to prevent improper intrusion on *either of the Benches*.

The *bar* in the old Courts at Westminster.

The *bar* of the old Courts at Westminster seems to have been guarded and kept with the same forms as in the more ancient *Curia Regis*.⁴ In the pictures and illuminations already referred to we see the Judges on the different *Benches*, the officials at the tables below, and the litigants with their Counsel, the Serjeants of the Coif, *standing by them at the Bar*.⁵ The picture of the King's Bench, in addition to what we see in that of the Common Pleas, shows us the *Prisoner at the Bar*

¹ Sir Francis Palgrave speaks of the different *Benches* of the *Curia Regis* as if occupied by distinct sections of the Court.—Hist. Comm. 291; and we have even at this day very distinct Benches in the High Court of Parliament—*Ministerial* or *Opposition*—occupied by distinct sections of the august Assembly.—House of Lords or Commons.

² See *ante*, 74. See also May, Law of Parliament, ch. 3; 77 Lords' J., 737; 33 Com. J., 594. The *standing at the Bar* in the case of any offender against the authority and privileges of the House of Commons was directed by a resolution 16th March, 1772, in place of an older rule that required prisoners to receive judgment "on their knees" at the Bar. This was discontinued in consequence of Lord Mansfield, then Mr. Murray, refusing to kneel when brought up to the Bar of the House of Commons on 4th February, 1750.

³ The *bar* of the House of Lords in ordinary judicial business is in the keeping of special officers as in the old days of the *Curia Regis*: and the special observances with regard to the *bar* of the House of Commons, have been so recently made familiar to the ordinary reader, that it is only necessary to remark that the traditions as well as the practical use of the bar of the High Court are in both Houses identical.

⁴ The proclamation of the Chief Usher and Crier of the old Court of King's Bench on the sitting and rising of the Court, always called on strangers to "void the bar."

⁵ This illumination describes six prisoners in the dock waiting to be put to the *Bar* for trial; see p. 3 of Mr. Corner's work published by Nicholls, 1865.

with his Counsel standing by him : and in other representations of the old Courts we have ample proof of the old use of *the bar* as the proper place for the pleader, the litigant, and the prisoner.

The accommodation of *seats* at the bar of the Courts appears but a modern contrivance. In the old picture of the Court of Common Pleas just referred to, there appears no seat for any of the Serjeants, only standing room for the Serjeants engaged in the case, and others whose business brought them *to the bar*. The expression *sitting within the bar* was certainly not known before the seventeenth century ; and it is probable that the accommodation of seats for Counsel had not been really made long before.¹ Who were usually heard first at the bar of the several Courts, we may not be able very distinctly to show ; but it is clear that in all matters relating to *audience at the bar*—the appearing or pleading as advocate, or *standing by* the litigant or accused as his Counsel, the records of our Courts show that regulations more or less restrictive have always been observed.² It is quite unnecessary to repeat that for ages this right of audience really belonged only to the recognised order of pleaders, *the Serjeants of the Coif*,³

No seats
for Counsel
in the
Courts.

Right of
audience at
the bar.

¹ It has been stated that the merit of procuring seats for Counsel in waiting at the bars of the Courts of Chancery and King's Bench is due to Mr. Cavendish Weedon of Lincoln's Inn, one of the earliest inhabitants of New Square, formerly Serle's Place. According to the biographers of Mr. Weedon this point was gained for the Bar about the year 1700 ; see Lane's *Student's Guide to Lincoln's Inn*, 219, 4th edition. It is clear, however, that *seats within the bar* were in existence when North had his patent as King's Counsel : see the note in Siderfin's Reports, 365, and Roger North's 'Life of Guilford,' p. 38. It seems most likely that some sort of sitting accommodation was provided for the Serjeants, Barristers, and others of the legal profession long before that time.

² See *ante*, p. 74, note 2.

³ "The degrees I mention in our profession are Serjeant-at-law, Benchers, and Utter Barrister."—Wynne's *Eunomus*, p. 283.

ancient legal position of the Serjeants-at-law, and to the way in which this was defeated by Coke. Three years after, when Bacon got his seat on the Woolsack, he took the opportunity of indulging in what he himself called *a fancy*, in order to upset the old order of precedence and preaudience.¹

This device of Bacon to upset the ancient order of precedence and preaudience at the Bar met with as little success as many others of his projects in the same direction, though they doubtless had the intended effect of introducing much laxity in the practice hitherto prevailing in Westminster Hall—to the gain of favoured individuals to the prejudice of the Serjeants and Benchers, who were the legitimate leaders of the Bar.

Effect of
Bacon's in-
novations.

In business affecting the Crown—the King's business as it was called—the Counsel and law officers of the Crown had always preaudience, and on that ground and to that extent *precedence*.² There must of course have been from the earliest times a staff of law officers and Counsel in the Courts, to represent the King in matters affecting the Crown; and reference is made on many occasions to the *King's Counsel in the law*—an

The King's
law officers
and
Counsel.

¹ "And since I am upon the point whom I will hear, your Lordships will give me leave to tell you a fancy. It falleth out that there be three of us the King's servants in great places that are lawyers by descent: Mr. Attorney, son of a Judge, Mr. Solicitor, likewise son of a Judge, and myself, a Chancellor's son. Now, because the law roots so well in my time, I will water it at the roots thus far, as besides these great ones *I will hear any Judge's son before a Serjeant, and any Serjeant's son before a Reader, if there be not many of them.*"—Bacon's speech on taking his seat as Lord Keeper.

² The expression used in Bacon's patent is *præsidentiam*, etc., *quæ ad unum consiliariorum ad legem spectant aut pertinent*, etc.; and the precedence and preaudience conceded in the innumerable *patents* of our time can legally go no farther, whatever pretensions indiscreet holders of such patents may think proper to set up.

expression which meant simply the *King's Serjeants*,¹ who with the Attorney- and Solicitor-General² were the only *King's Counsel* until the seventeenth century.

We have already had occasion to refer to the high office and position of the King's Serjeants, or regular Counsel in the law, the *Servientes Regis ad legem*, or *Servientes domini Regis ad legem*³ who really exercised most of the powers of the Attorney-General of modern times, including the proceedings by information ex officio and the duty of giving legal aid and advice to the Crown.⁴

Precedence
and pre-
audience of
the King's
Serjeants.

The King's Serjeants were in every way the chiefs of the Bar. The reader must be reminded that until recently the King's Serjeants always took precedence of the Attorney-General and every one else as the King's Counsel in the law and chief law officers;⁵ and it is

¹ See *infra*. Wherever in our law books we meet with King's Council, by that name are to be understood either the Privy Council, the Judges, or the Serjeants, sometimes the Parliament itself.—Cokes' 3rd Inst. 125, 1st Inst. 164.

² The Attorney of the Court of Wards and the Attorney of the Duchy of Lancaster were not usually described like the Attorney-General of England, as of *the King's Counsel in the law*.

³ See *ante*, p. 41. See Rastal, 268 a. Dugdale, Orig. Jur. 35, gives from the liberate Rolls, in a series commencing in 1276, the names of the King's Serjeants, and there seems proof enough of such appointments long before, even if we are not to rely on Bracton, § 157 b, that the King had his Serjeant in every county.

In Serjeant Wynne's tract, p. 244, "On the antiquity and dignity of the degree of Serjeant-at-law," it is stated that the earlier *liberate Rolls* are *lost*, but an old official of the Record Office, the late Mr. W. H. Black, has pointed out that such is not the fact, there being many such Rolls in existence.

⁴ We have seen how the King's Serjeants have always been summoned to Parliament like the Judges, to give advice and assistance in legal business. See *ante*, p. 43. Sir John Byles, the survivor of those who held the high office of Queen's Serjeant, died on the 3rd of February, 1884. His patent and summons to Parliament will be seen *ante*, p. 43.

⁵ See statute 5 Edw. III. c. 13.

certainly remarkable that in this, as in almost every other matter affecting *the coif*, the innovation on the ancient and legitimate order was brought about by no general or direct provision for the amendment of the law, by no general statute or ordinance, but by an exceptional provision, made for personal considerations, on the alleged ground of *expediency*.¹ This will be found to apply both to the change made in the reign of James I. granting the Attorney-General precedence over all the Serjeants *except the two ancientest*,² and the second

¹ This change has a little history of its own. It appears to have been brought about soon after the place of Attorney-General was obtained by Francis Bacon, described by the poet as "the wisest, brightest, meanest of mankind."

² Bacon, whose incessant schemes for self-aggrandisement are matter of history, succeeded in 1604 in inventing for himself the new appointment to be of *the King's Counsel extraordinary*: see *post*, p. 195; and when in 1613 he got the high position of Attorney-General, he appears to have been greatly mortified at finding that even then in many cases he had to give place to the Serjeants-at-law. A case reported in Bulstrode's Reports (vol. iii. p. 32) concludes with the note of a discussion between Bacon, then Attorney-General, and Coke, then Chief Justice.

Sir Francis Bacon, Attorney-General, being to move, a Serjeant-at-law having a short motion offered to move before him, at which he was much moved, saying, that he marvelled he would offer this to him. But per Coke Chief Justice—"No Serjeant ought to move before the King's Attorney, when he moves for the King, but for other motions *any Serjeant-at-law* is to move before him, and when I was the King's Attorney I never offered to move before a Serjeant, unless it was for the King." Sir William Follett referred to this note in Bulstrode's Reports with great effect in arguing the Serjeants' Case before the Privy Council in 1839, to show the legal right of preaudience and precedence of the Serjeant-at-law. Coke's ruling, though not affecting the right of preaudience of the Attorney-General in Crown business, seems at once to have brought about the change in the order of precedence of the King's Serjeants and the Attorney- and Solicitor-General [referred to hereafter, see *post*, p. 193,] by which the Attorney- and Solicitor-General had thenceforth place and audience in the King's Courts *next after the two ancientest* of the *King's Serjeants*. This partial forbearance of Bacon in favour of the King's ancient Serjeants may be well accounted for, considering that the then ancient Serjeant, Doderidge, had in 1607 resigned the office of Solicitor-General, in which he had greatly distinguished himself—see *State Trials*,

change, in 1814, during the regency of George Prince of Wales; when, Garrow being Attorney-General, and Serjeant Shepherd, the King's ancient Serjeant, made Solicitor-General, it was arranged, in order to accommodate all those immediately concerned, without regard to the future, that the Attorney-General should take the precedence, and the old Order of the Coif again be thus permanently deranged.¹

The Attorney- and Solicitors-General.

The offices of Attorney- and Solicitor-General are, as already observed, a modern substitute for that of King's Serjeant,—*Attornati Regis* are constantly mentioned in

2,566—in order to make room for Bacon. Gratitude, however, was not one of Bacon's weaknesses, for he contrived afterwards to malign Doderidge. See Bacon's Works, xii. 125.

¹ Order of the Prince Regent for establishing the precedence of the Attorney- and Solicitor-General:—

“In the name and on the behalf of His Majesty, George P.R.

“Whereas Our Attorney and Solicitor General now have place and audience in our Courts next after the two ancientest of Our Serjeants at Law for the time being, and before Our other Serjeants at Law: We, considering the weighty and important affairs in which Our Attorney and Solicitor General are employed, and in which the Attorney and Solicitor General of Us Our heirs and successors, may hereafter be employed, do hereby order and direct that at all times hereafter the Attorney and Solicitor General of Us Our heirs and successors shall have place and audience *as well before the said two ancientest of Our Serjeants at Law as also before every person who now is one of Our Serjeants at Law* or hereafter shall be one of the Serjeants at Law of us, Our heirs or successors; and We do hereby will and require you, not only to cause this Our direction to be observed in Our Court of Chancery, but also to signify to the judges of all Our other Courts at Westminster, that it is Our express pleasure that the same course be observed in all Our said Courts. Given at Our Court at Carlton House the 14th day of December in the 54th year of His Majesty's reign. By command of His Royal Highness the Prince Regent in the name and on behalf of His Majesty.—SIDMOUTH. To the Right Honourable John Lord Eldon, Our Chancellor of Great Britain.” In this case the matter could more easily have been arranged at once without recourse to questionable expedients, by Serjeant Shepherd resigning his own patent office of King's ancient Serjeant before he took office as Solicitor-General, as was done by Serjeant Fleming in 1595. See on this Dugdale, Orig. 140.

legal proceedings as early as 1279¹ and for nearly two centuries afterwards. We then find a permanent law officer called the King's Attorney-General,² and up to the seventeenth century there were no other King's Counsel recognised in the Courts than the King's Serjeants and the Attorney- and Solicitor-General. The first deviation from this rule was made by the contrivance of Sir Francis Bacon, the originator of so many other innovations, who succeeded, for special purposes, in 1604, in getting himself appointed *King's Counsel extraordinary* without being either a Serjeant-at-law or one of the ordinary staff of law officers, or even being retained in any cases for the Crown. Bacon thus afforded a precedent for a system of Royal patronage and promotion at the Bar which is altogether opposed to its ancient traditions and the public interest—a system admitted to be properly described as *an anomaly*. There have been many mistakes and misstatements made as to Bacon's appointment—as to the fact of his having really been the first of the modern class of *King's Counsel*. The more usual mistake is that based on Bacon's own version of his conduct, inducing even Blackstone to believe that the place Bacon held was merely *honoris causâ*, and that North was the first of

The King's
Counsel ex-
traordi-
nary.

¹ When William de Gisilhan is so described in a placitum before the Justices in Eyre and Gilbert de Thorndon in a *quo warranto*. Such appointments of *Attornatus Regis* specially for particular proceedings are referred to in the old book of Entries. Bastall, Debt, 192, p. 4; Cessavit 114 b, pl. 3; Quare Impedit, 527 b, pl. 1.

² Besides the ordinary *Attornati Regis*, there were the King's Attorney of the Court of Wards and Liveries, and the Attorney of the Duchy of Lancaster. Both of them appear to have been grand appointments. Nicholas Bacon was Attorney of the Court of Wards and Liveries when in 1559 he was made Lord Chancellor: and the Attorney of the Duchy of Lancaster in more modern times frequently rose to the highest offices in it.

the modern class we are referring to;¹ whilst Lord Campbell, equally wrong, speaks of such appointments as known *many years before* Bacon's time.²

Bacon's
patent as
King's
Counsel.

There is abundant proof of what really took place. Francis Bacon, who after great importunity,³ obtained

¹ Blackstone says that Bacon was made Queen's Counsel "*honoris causa*" without either patent or fee, so that the first of the *modern order* (who are now the standing servants of the Crown with a standing salary) seems to have been Sir Francis North."—3 Com. 27. As to this mistake, see *infra*, note.

² In his life of Egerton (Lord Chancellor Ellesmere) Lord Campbell speaks of Queen Elizabeth making him "*one of her Counsel*, whereby he was entitled to wear a silk gown, and to have precedence over other barristers"—'Lives of Chancellors,' ch. xlvii.; but the appointment really conferred on Egerton was that of Solicitor-General, which he got in 1381—Dugdale, Chron. Series, 97, quoting Pat. 23 Eliz. p. 1; and *silk gowns* came in long afterwards.

³ Francis Bacon Lord Verulam, Viscount St. Albans, the son of Sir Nicholas Bacon and nephew of the grand Lord Burleigh, after an obscure university career, began to keep his terms in Gray's Inn in 1578, and from all accounts, the favours shown him were many, and certainly not unsolicited. The Lansdowne MSS. 51, art. 6, show that as soon as he was called to the Bar he was pushed on to place and profit and unfair precedence in his Inn, being made a Bencher at 26. See notes of Lord Burleigh appended to the order stated in the Lansdowne MSS. Bacon speaks of this promotion as "a late motion of mine own, wherein I sought an ease in coming within Bars—not any extraordinary or singular note of favour."—Bac. Works, xii. 473. He had already obtained the reversion to a sinecure office of £1600 a year, and hesitated not to beg for promotion and office rather than work, as others were obliged to do. In a letter to Lord Burleigh in 1591 he says he was then one-and-thirty years old, and threatens, if his Lordship "will not carry him on," to sell his inheritance and purchase some sinecure office and so become a sorry bookmaker. Though a briefless Barrister, his friends at court, urged by his importunity, endeavoured in 1593 to get him made Attorney-General. Bacon's letters at the time betrayed his underhand efforts in every way to disparage Coke, the Solicitor-General and proper successor to the office. See Bacon's Works, xiii. 74, 75-78, 85. Most writers agree that this conduct of Bacon's is but a sample of his system of obtaining advancement in 1594. On Coke becoming Attorney-General, and Serjeant Fleming Solicitor-General, Bacon's importunities at last procured from Queen Elizabeth an irregular retainer or appointment as Counsel for the Crown on extraordinary occasions, one of these being the trial of Essex in 1601, in which Bacon did, certainly not raise his own character as a lawyer or a gentleman. See Jardine's Crim. Trials, i. 385; see Bacon's Works, vi. 299.

from Queen Elizabeth the promise that he should be engaged as one of Her Majesty's *Counsel extraordinary*, never set up that this was in any way a binding engagement, or more than a post conferred *honoris causâ*;¹ but after Elizabeth's death, and James I. had become her successor, Bacon, after much more importunity and solicitation, (and some adroit misrepresentation of what had before taken place,) at last obtained his formal appointment from King James by letters patent making him "consiliarium nostrum ad legem, sive unum de consilio nostro erudito in lege." It will be seen the tenure was "*quamdiu ipse se bene gesserit*," but an annuity of forty pounds a year, by no means inconsiderable in those days, was reserved to the impecunious philosopher *for his life*. The official duties, whatever they were, ceased as Bacon obtained higher offices, and on his becoming Attorney-General; but the pay remained, together with that from another Royal grant, apparently made without consideration.²

¹ Bacon's original appointment was certainly indefinite enough as "Queen's Counsel extraordinary," and he represented to King James that his title was the *promise* of Queen Elizabeth. He himself called the office a vague appointment without patent or fee, a sort of *individuum vagum*.—Birde's 'Letters of Bacon,' 256. But Bacon was not a man likely to seek work without pay. The mode of his payment was very remarkable. In Catesby's case, in 1601, Bacon got £1200, sharing with Gorges and Carpenter the £4000 paid by Catesby for his pardon. See Counc. Reg. xvii. 336. Until he was reappointed by James I., Bacon was not really a law officer, or the retained Counsel of the Crown. His letters show that he hardly got a single retainer without begging for it. He was not employed in the trial of Sir Walter Raleigh, Serjeant Heal and Serjeant Phillips being retained with the Attorney-General: the chief Crown prosecutions in the time of Elizabeth and James I. being conducted by the Queen's Serjeant and King's Serjeant respectively.

² To prevent any mistake on this subject we now give a copy of the actual appointment which appears in Rymer's 'Fœdera,' xvi. fol. 596:

"De Concessione ad Vitam pro Francisco Bacon.

"Rex omnibus ad quos &c. Salutem. Sciatis quod nos,

Bacon's
patent as
K. C.
ceases on

Bacon's appointment as King's Counsel seems to have been treated as altogether ceasing when in 1607 he was

"Tam in consideratione boni fidelis & acceptabilis servitii; per Dilectum servientem nostrum Franciscum Bacon militem præstiti & impensi, quam pro diversis aliis causis & considerationibus ad hoc nos specialiter moventibus,

"De Gratia nostra speciali ac ex certâ scientiâ & mero motu nostri constituimus ordinavimus & appunctuavimus, ac, per Præsentes, pro nobis Hæredibus & successoribus nostris, constituimus ordinamus & appunctuamus præfatum Franciscum Bacon Consiliarium nostrum ad Legem, sive unum de Consilio nostro erudito in Lege,

"Dedimus etiam & concessimus &, pro Nobis Hæredibus & Successoribus nostris, damus & concedimus, per Præsentes, præfato Francisco Locum & Præsentiam in *Curiis nostris vel alibi* & Præaudientiam, necnon omnia & singula Proficua Advantagia, Emolumenta Jura Præeminentia confidentias, seu alia quæcunque quæ ad unum Consiliarium nostrum ad Legem, ut Consiliario hujusmodi, & minimè ratione alicujus specialis Officii, spectant aut pertinent, aut spectare aut pertinere consueverunt aut de jure debent,

"Volumus etiam & concedimus, pro Nobis Hæredibus & Successoribus nostris, quòd præfatus Franciscus Bacon habeat plenam & sufficientem Potestatem & Auctoritatem ad omnia & singula præstanda exequenda & perimplenda, quæ quivis alius de Consilio nostro erudito in Lege ut unus de Consilio nostro prædicto, & minimè ratione specialis alicujus Officii possit exequi & perimplere,

"Habenda & tenenda gaudenda percipienda & exercenda Potestatem auctoritatem Proficua, ac omnia & singula præconcessa sive expressa præfato Francisco quamdiu ipse se bene gesserit in executione & exercitio Muneris Auctoritatis & Potestatis Prædictarum, in tam amplis modo & forma quam aliquis alius de Consilio nostro erudito in Lege, vel ipse Franciscus, *ratione Verbi Regii Elizabethæ* nuper antecessoris nostri vel ratione Warranti nostri sub Signatura nostra Regia habuit tenuit gavisus est vel executus est, nichilominus nolumus quod hæc concessio nostra derogat alicui officio antehac, per nos aut antecessores nostros dato vel concesso.

"Et ulterius, de uberiori gratia nostra pro exercitio servitii Prædicti dedimus & concessimus, ac per Præsentes, pro nobis Hæredibus & Successoribus nostris, damus & concedimus præfato Francisco Bacon Vadium & Feodum Quadraginta Librarum bonæ & legalis monetæ Angliæ per annum, solvendam annuatim eidem Francisco Bacon ad Festa Sancti Michaelis Archangeli & Paschæ per æquales Portiones, de Thesaurò nostro Hæredum & successorum nostrorum, per Manus Thesaurarii & Camerariorum ibidem pro tempore existentium, prima solutione inde incipiendâ ad Festum Festorum Prædictorum proximo post Datam Præsentium,

"Habendum & tenendum gaudendum & percipiendum Vadium & Feodum prædictum, durante Vitâ naturali prædicti Francisci Bacon.

made Solicitor-General; so that his tenure of office of King's Counsel was less than three years.¹

his becoming Solicitor-General.

"In cujus rei &c.

"Teste rege apud Harfrild vicesimo quinto Die Augusti. A° 1604, A. R. 2.

"Per Breve de Privato Sigillo."

If any proof were wanting of the mercenary character of the arrangement with the Crown by Bacon, it is afforded by the document set forth in Rymer's 'Fœdera' immediately after Bacon's patent as King's Counsel, granting him an additional pension of sixty pounds a year for some undescribed services *jointly or severally rendered by Bacon and his deceased brother*. This remarkable document is as follows:—

"Pro eodem Francisco Bacon Milite.

"Rex omnibus ad quos &c. Salutem. Sciatis quod nos,

"Tam in consideratione boni fidelis & acceptabilis servitii, per nuper dilectum nostrum Antonium Bacon Armigerum defunctum, Fratrem germanum Francisci Bacon Milites servientis nostri, ac etiam per dilectum servientem nostrum prædictum Franciscum Bacon Militem præstiti & impesi, quam pro diversis aliis causis & considerationibus ad hoc nos specialiter moventibus,

"De Gratia nostra speciali, ac ex certa scientia & mero motu nostris, dedimus & concessimus, ac per Præsentes, pro nobis Hæredibus & successoribus nostris, danius & concedimus præfato Francisco Bacon quandam annualem Pensionem Sexaginta Librarum bonæ & legalis Monetæ Angliæ per annum, solvendam annuatim eidem Francisco Bacon ad Festa Sancti Michaelis Archangeli & Paschæ per æquales Portiones, de Thesauro nostro Hæredum & Successorum nostrorum, per Manus Thesaurarii & Camerariorum ibidem pro tempore existentium, prima solutione inde incipiendâ ad Festa Festorum prædictorum proximum post datum Præsentium,

"Habendam et tenendam gaudendam & percipiendam annualem Pensionem prædictam, durante Vitâ naturali prædicti Francisci Bacon.

"In cujus rei &c.

"Teste Rege apud Harfrild vicesimo quinto Die Augusti.

"Per Breve de Privato Sigillo."—Rymer, 'Fœdera,' vol. xvi. p. 597.

A.D. 1604, 2 Jac. 1.

A.D. 1604, Pat. 2, Jac. 1, p. 12, m. 15.

¹ The entries in Dugdale's Chron. Series are: 1607. Franciscus Bacon Miles constitut Solicitor Regis General. 1613. Attornatus R. Gen. pat. 11 Jac. p. 5. 1616. Francisc. Bacon eques aur. et Attornatus Regis Generalis habuit custodiam magni Sigilli sibi commissum 7 Martii claus. 16 Jac. in dorso part 15. 1617. Claus. 16 Jac. in dorso part 15 idem Franciscus Baro Verulam constit Cancellarius Angliæ 4 Jan. Parliament, which had not met for nearly seven years, sat on the 30th January 1621, and Bacon, after getting a further advance of dignity by being made

Such is the authentic account of the appointment of the first of the class of King's Counsel, and we hear of no other such appointment¹ until 1668, when Francis North (afterwards Lord Keeper Guilford), following the precedent established by Bacon, obtained a patent as "King's Counsel" without being either Serjeant-at-law or one of the King's ordinary legal staff, such as Attorney- or Solicitor-General, and his promotion, which North's very partial biographer tells us "had the effect of a trumpet to his fame,"² certainly appears to have caused very considerable disgust throughout Westminster Hall, where the only *King's Counsel* then recognised were the King's Serjeants,³ Attorney- or Solicitor-General; and where no one else had precedence or preaudience but the ordinary Serjeants-at-law and the Readers and

Viscount St. Alban's (Rymer xvii. 239) for his many faithful services to the King (in doing so long without a Parliament), on March 15 was formally charged by the House of Commons with systematic corruption, and on the 24th April he made a general confession of guilt; and Dugdale's memorandum is *abdicatus ob corruptelas* 3 Maii 1621.

¹ The entry in Siderfin's Reports is thus: "Easter 20, Car. 2. 2 *fuer fait de Counsel del Roy*."

"Auxy c terme Mr. North (mon contemp) de Mid. Temple et Mr. Miller de Lincoln's Inn fuer fait de Counsel del Roy et veigne deins les Barres, et apres ascun dispute."

"Mr. North ad lieu al Bar de Mid. Temple de les Lecturers, mes nemes de Sir Pet. Ball Attorney al Roin Mother, nest de Mr. Montague Attorney al ore Roync coment ceux second ne fuer de Council de Roy."—Sid. 365. The name "Miller" in Siderfin's memorandum is evidently a mistake for "Turner," who was at that same time made Solicitor-General.

² This had the effect of a trumpet to his fame; for the King had no counsel then except Serjeants.—North's 'Life of Guilford,' p. 38.

³ The expression King's Counsel, as we have seen, really applied to the King's Serjeants; and Sir Henry Montague, one of the grantees of the Temple, is so called in the patent from James I., but *he was King's Serjeant*; and when up to the eighteenth century we hear of King's Counsel, we may assume they were either King's Serjeants, or the Attorney- or Solicitor-General.

Benchers. North though he got his place failed to establish his good name.¹

The second King's Counsel, North, though he secured a good place, failed to establish a good name in Westminster Hall. His *professional and unprofessional* manœuvres are described by his biographer, Roger North, with fraternal admiration and a pardonable amount of colouring,² but spoken of with much horror by the late Lord Campbell, who, whatever his own *irregularities*, was sufficiently severe on the *irregularities* of others;³ and Bishop Burnet, whose account

Reputation
of the
second
King's
Counsel.

¹ As the Benchers of the Middle Temple refused to call North to their Bench, North again resorted to the expedient of using the influence of his friends at court, and the result was that the Judges used a sort of force to compel the Benchers to admit Mr. North. When any of the Benchers came into Court the Judges refused them audience "until they had done justice to Mr. North;" and after a few days of such unseemly behaviour the Benchers gave in, and Mr. North was recognised as *King's Counsel* and made a Benchers. Francis North appears to have been a man not likely to be deterred by delicacy of feeling from taking any advantage.

² Roger North says that his brother was a wonderful artist at "watching a Judge's tendency to *make it serve his turn*, and yet never failed to pay the greatest regard and deference to his opinion, for so they get credit, because the Judge, for the most part, thinks the person the best lawyer that respects most his opinion. I have heard his Lordship say that sometimes he hath been forced to give up a cause to the Judge's opinion when he (the Judge) was plainly in the wrong, and when more contradiction had but made him more positive, and besides that in so doing he himself had weakened his own credit with the Judge and thereby been less able to set him right when he was inclined to it, as good opinion so gained often helps at another time to good purpose, and sometimes to ill purpose, as *I heard it credibly reported* of Serjeant Maynard, that being the leading Counsel in a small fee'd cause, would give it up to the Judge's mistake, and not contend to set him right, that he might gain credit to mislead him in some other cause in which he was well fee'd."—'Life of Lord Keeper Guilford,' vol. i. p. 71.

³ "These gentlemen of the long robe ought to have changed places in Court with the highwaymen they were retained to prosecute."—'Lives of the Chancellors,' c. 94, p. 287, ed. 5. Lord Campbell, speaking of North's road to promotion, says, "nothing pleased him so much as to get on by personal favour. Lord Chief Justice Hyde generally rode the Northern Circuit, and so completely had North taken the measure of his foot that

is in the nature of living testimony, makes the second holder of the office of King's Counsel extraordinary appear in anything but a favourable light, representing him, though guiltless of such offences as those brought home to Bacon, quite his equal in meanness and subterfuge, almost as much his superior in sinister manoeuvres, as his inferior in mental acquirements.¹ North's *public services*, on which his claim to preferment rested, seem, like those of Bacon, to have been of a somewhat indefinite and equivocal character,² and closely following Bacon's course of advancement, he succeeded in making the vague appointment of King's Counsel a stepping-stone to the more substantial place of Solicitor-General,³ which, like Bacon, North adroitly acquired three years after the date of his patent as King's Counsel, justifying the remark of his contemporaries, that under any

my Lord called him 'cousin' in open Court, which was a declaration that he would take it for a respect to himself to bring him causes."—*Id. ib.*

¹ In Bishop Burnet's 'History of his own Time,' p. 84, Francis North, Lord Guilford is described as "a crafty, designing man, despised and ill thought of by the whole nation." He obtained the nick-name of "Sly-boots" from being so called in a libellous publication of the day.—*Id. ib.*, note.

² See North's 'Life of Lord Keeper Guilford,' p. 37. The occasion of North's preferment, according to Roger North, was his arguing Hollis's case in the House of Lords in 1668. This was an appeal from the decision of the King's Bench against the five members who in 1629 kept the Speaker of the House of Commons under restraint. Francis North got (through his great ally, Sir Jeffrey Palmer, the Attorney-General) the brief for the Crown, and he lost the cause; but, as Roger North says, although "the Commons carried the cause" he was thereupon made of the King's Counsel, which gave him the privilege of preaudience and coming within the bar. Roger North adds, "this action and its consequences had the effect of a trumpet to his fame; for the King *had no Counsel then except Serjeants*," p. 37.

³ North obtained his patent as King's Counsel in 1668, and the office of Solicitor-General in 1671. There was just the same interval between Bacon's patent as King's Counsel and his appointment as Solicitor-General. See *ante*, p. 197.

circumstances Francis North would generally contrive to find a way for himself.¹

The appointment of *King's Counsel extraordinary* contrived by Francis Bacon in 1604 and revived by Francis North in 1664, seems not to have been conferred on, or even to have been applied for, by other members of the Bar for a long time after. The rules followed at the Revolution in 1689 greatly checked the granting of patents, the creation of new offices of any kind, and the increase of legal officials; and no such appointment as *King's Counsel extraordinary* seems to have been made in the reigns of William and Mary, or Anne. The Judges and regular law officers of the Crown, if not of the order of the Coif at the time of appointment, were certainly not selected from those who held indefinite appointments as *King's Counsel* without being so employed.² In the last century we do not find *King's Counsel* referred to as a distinct class or order. Their whole number never exceeded twenty, consisting partly of those who were actually retained by the Crown, and

Subsequent course of appointments of King's Counsel.

¹ Hale, who had no great admiration for Francis North, observing him waiting in the passage of the Court, apparently unable to get through the crowd, is said to have called out, "Pray make way for the little gentleman, for he will soon make a way for himself." Hale's frequent personal remarks on North seem to have driven him from the King's Bench Bar to the *Court of Chancery*, where he continued exclusively to practise for several years after being made Solicitor-General—at that time a very unusual thing for the *Solicitor-General* to do.

² Holt, Parker (Lord Macclesfield), Pratt, and other Chief Justices of Queen Anne's time, were selected in the orthodox way from the practising Serjeants-at-law, and the puisne Judges also from the order, or those specially called for the purpose. Lord Raymond, Lord Hardwicke, Sir Dudley Ryder, and Lord Mansfield were only *King's Counsel* as Attorneys and Solicitors-General, but very few of the Judges before the time of George III. ever held patents as *King's Counsel extraordinary*; and Chief Justice Lee, who had been *King's Counsel temp.* George II., is made the especial subject of Lord Campbell's *pleasantry*. See the 'Lives of the Chief Justices,' vol. ii. p. 213.

partly of the mere nominees of the Government of the day, holders of offices of minor importance, and certainly not in the first position at the Bar.

Great increase in number of Queen's Counsel.

The earliest *Law List* we have—that published in 1775—gives the names of the then *King's Counsel*, the number being fourteen, less than the number of the Serjeants-at-law,¹ at that time; and not a third of such “King's Counsel” seem to have been in actual practice in Westminster Hall, though the *whole English Bar* then consisted of a comparatively small number.²

Disqualification of King's Counsel.

At the time just referred to, the appointment of King's Counsel was treated in Westminster Hall as an office under the Crown, however indefinite its duties and obligations. Not only was every one so appointed precluded, like the *Advocati Fisci*, from acting as Counsel against the Crown or the Government, but a member of Parliament, on *taking office* under such an appointment vacated his seat: and in order to obviate these consequences an expedient was resorted to, which Blackstone very

¹ The names given include the Queen's Attorney- and Solicitor-General, and Ambler, Bearcroft, James Mansfield, Skynner, and Wallace, all men of note at the Bar, on the Bench, or in Parliament; but the rest of these *King's Counsel* were unknown in Westminster Hall, unless we take the case of Daines Barrington, who, though he never made any position at the Bar, got a *Welsh Judgeship* and several other appointments such as Deputy-Keeper of the Wardrobe, Secretary to Greenwich Hospital, etc.; and, amongst a large number of literary productions, left us ‘An Account of some Fish in Wales,’ ‘Observations on the Ancient Statutes,’ Essay on the probability of reaching the North Pole, etc., and personally afforded material for Charles Lamb's amusing account of the Old Benchers in the ‘Essays of Elia.’

² At the time referred to the number of Serjeants-at-law was fourteen—four of them holding the high position of *King's Serjeants*, and all were men of high repute in the profession.

The *Law List* referred to gives the names of the *whole of the Bar* at that time other than the Serjeants and King's Counsel, amounting altogether to 165, considerably less than the number of *Queen's Counsel* at present.

distinctly mentions,¹ of occasionally substituting for the patent of appointment of *King's Counsel* what came to be called a *patent of precedence*, which, without fettering the patentees with the disabilities of King's Counsel, gave them equal rights of precedence and preaudience in Court. Such were the patents obtained by Erskine and Scott (Lord Eldon),² all under rather extraordinary and remarkable circumstances.

Patents of precedence.

When Lord Eldon came to the Woolsack a few years afterwards he seems to have contrived during his long *innings* to concede as little as possible the right of precedence or preaudience, even to the most able or most distinguished members of the Bar, and to withhold either *patents of precedence* or as "King's Counsel" from those politically opposed to the Government. Such promotion was denied to Scarlett (Lord Abinger) until a quarter of a century after his call to the Bar, when he changed his politics, and left the ranks of the Liberal

Lord Eldon's appointments of King's Counsel.

¹ "A custom has of late years prevailed of granting letters patent of precedence to such barristers as the Crown thinks proper to honour with that mark of distinction: whereby they are entitled to such *rank and precedence* as are assigned in their respective patents, sometimes next after the King's Attorney-General, but usually next after his Majesty's Counsel then being."—3 BL. Com. 28.

² On the formation of the Coalition Ministry in 1783, Lord Thurlow gave up the Great Seal, which was put in commission, with Wedderburn (Lord Loughborough) as Chief. The Lords Commissioners, as we are told in Lord Eldon's life, "were authorised by the new Government to call within the Bar a few of the most eminent among the junior Counsel; and Mr. Scott received a message from the Duke of Portland, through the Lords Commissioners, offering to include him in this promotion, and Mr. Scott, with his habitual prudence, took time to deliberate."—Twiss, 'Life of Lord Eldon,' vol. i. p. 141. At first the silk gown was accepted, but when Scott found that Erskine and Pigott, who were his juniors, had already received patents of precedence, he contrived to have their patents altered and fresh patents of precedence granted, so as to place himself senior to Erskine and Pigott, whose patents had just before given them the seniority.—*Id. ib.* 143.

Treatment
of Brough-
ham and
Denman.

party;¹ whilst Brougham and Denman, who, as Queen Caroline's Attorney- and Solicitor-General, had received the distinction of silk gowns and the right to seats within the Bar, were on the Queen's death, by the paltry conduct of George IV. and his faithful henchman on the Woolsack, deliberately *degraded* and forced, in defiance of public opinion,² to give up their silk gowns, etc., and to take their place in the back rows of Westminster Hall, behind men altogether their inferiors, who had patents as King's Counsel.³

Lord
Eldon's
batches of
King's
Counsel.

Lord Eldon, according to Horace Twiss, his eulogistic biographer, procrastinated even the appointment of

¹ Scarlett was made a King's Counsel after Easter Term 1816, being called within the Bar by Lord Ellenborough, at Nisi Prius, the first time such a ceremony had ever been so performed (there being no Bar at Nisi Prius), and the proceeding was deemed irregular, and for some time the Benchers of the Inner Temple refused to admit to the Bench table either Scarlett or Sir Charles Wetherall, made a King's Counsel at the same time. See per Pollock, Chief Baron, *Hayward's Case*, 82.

² How Denman's ill-treatment by George IV. induced the Corporation of London to elect him Common Serjeant, see *ante*, p. 45.

³ In the law books of that time the announcement was simply that "upon her late Majesty's death, the gentlemen bearing the offices of her Attorney- and Solicitor-General respectively, assumed less distinguished robes, and returned to their standing as Utter Barristers." See 18th edition of Blackstone's Commentaries, vol. iii. p. 28, note. What actually took place was not so announced; but in the published letters of Lord Eldon it is evident that George IV. and his Chancellor took especial delight in the loss of "Mr. Brougham's silk gown;" see Twiss's 'Life of Lord Eldon,' vol. iii. p. 2; and what occurred with respect to both Brougham and Denman show how easily the patronage of the Bar by the Crown may be turned to a bad account. Both Brougham and Denman unjustly suffered seven years' degradation in Westminster Hall for having been the advocates of George IV.'s hated Queen; and when, on Lord Lyndhurst's becoming Chancellor, the tardy justice was done them of restoring their precedence and preaudience, Eldon and his Royal master were driven to equivocation in order to excuse their conduct. Brougham received his patent of precedence in May, 1827, soon after Serjeant Copley became Lord Chancellor Lyndhurst, and is described by Lord Campbell as keeping his patent in his pocket and acting without the Bar in his stuff gown, until informed what course was to be taken with Denman.—Letter 2nd June, 1827—'Life of Lord Campbell,' vol. i. p. 145.

King's Counsel till the number of *applications* had accumulated so as to require serious consideration, and then came out what he designated a "batch of silk gowns;"¹ and Mr. Horace Twiss, who had been included in one of these *batches*, was, "in the interests of the state," desirous that in future the batches should be less heavy and less frequent. The large number of King's Counsel had even then become a matter of frequent animadversion, not very long after we find a Judge, who had himself been one of the body, speaking of the *multitudinous and indiscriminate creation of Queen's Counsel* as a serious evil.² Since that time the number

¹ "When at last the Chancellor *did* make up his mind to create what is called 'a batch of silk gowns,' he found himself obliged, from the intermediate accumulation of claims, to constitute so many, that a *few more or less appeared hardly a matter of moment*. Among the numerous candidates that poured in, but a few were able to secure even business enough for a fair trial; and the Inner Bar was swamped by an influx which, if the stream had been more gradual, might possibly have been absorbed. The fashion of making King's Counsel in great batches has indeed been productive of serious evil, in all ways. It has transferred that which ought to be the patronage of the Crown to the hands of the solicitors, and through the competition of numbers within the Bar, has tended to divest the leading counsel of that control which they ought always to have power as well as disposition to exercise over the tempers and appetites of keen practitioners.

"It has lowered the value and character of professional honours by the wide distribution of them. And by forcing a premature emulation for rank, it has given a false stimulus to much ability and learning, which would have worked more safely and more usefully to the community, if left to a less sudden development. On several of these *brevets* it would probably have been better even for the candidates themselves (to say nothing of the general credit of the Bar on almost any principle not involving actual injustice), that only one in three or four of them should have been singled out, than that so many should have had their requests conceded. They have but helped to illustrate the position of Juvenal—

— nocitura *togâ*, nocitura petuntur,
— Militiâ."

Horace Twiss, 'Life of Lord Eldon,' vol. iii. p. 469.

² "The multitudinous and indiscriminate creation of Queen's Counsel has made the number of Benchers in the two most considerable Inns of Court too unwieldy for the proper government of those societies."—Reply

of "Queen's Counsel" has become at least three times as large, out of all proportion to the exigencies of the public or of the legal profession,¹ and directly militating against the sound principles on which the institution of the English Bar is based—independence of the Crown, State influence or control. The practice of appointing so large a portion of the Bar as *Counsel to the Crown*, giving to them precedence and preaudience in all legal proceedings whether or not the Crown is immediately concerned, can hardly be justified by any sound principle or constitutional doctrine; and the contrivance by which the Queen's Counsel were appointed without pay has tended to place such appointments certainly on no sounder footing.²

Precedence
and pre-
audience.

According to the best authorities the actual order of audience, the *precedence* or *preaudience* in the different

of Vice-Chancellor Sir John Stuart to the Inns of Court Commissioners of Inquiry, 1854, Appendix to Report, p. 262. Sir John Stuart was made a Queen's Counsel in 1839, when the number of Queen's Counsel was about seventy, more than two-thirds of them very eminent men. The number now exceeds 200, of whom hardly one-third appear to be in actual practice as *Counsel* for Her Majesty or for any of her subjects.

¹ The whole number of Queen's Counsel appearing by the Law List to be at present in actual practice in any of the law courts, or on any of the circuits, or before Parliamentary Committees, does not exceed seventy. The Law List includes among the Queen's Counsel not only those in actual practice, but the names of gentlemen who have retired from the Bar, or have vacated the position of Queen's Counsel by holding inconsistent judicial appointments. See *ante*, p. 202.

² When Bacon's importunities had secured for him the first patent as King's Counsel, the forty pounds a year thereby secured to him (see *ante*, p. 195) seems to have formed no unimportant part of the consideration. Forty pounds a year was, in the time of James I., by no means an insignificant salary. The value of money has since greatly decreased, and the King's Counsel's salary came to form but a petty part of the value of his appointment; and soon after Lord Campbell came into office as Attorney-General the Treasury was relieved from the payment. Lord Campbell as well as his predecessors, as King's Counsel, had received it, but their successors had to give it up.

Courts, has really been settled from time to time less by any direct authority from the Crown than by the regulations of the Judges; and grave doubts have been entertained whether any right of precedence or preaudience can be derived merely from a Royal Patent or personal concession.¹ The regulations and usages of the Court from the earliest times seem to bear out this proposition; and it is unnecessary to repeat what has been already said on this subject. Questions relating to the right of audience as Advocates, and the order of precedence and preaudience at the Bar, have always been deemed to belong to the presiding Judges, to dispose of in accordance as far as possible with long usage and the ancient constitution of the Courts.²

The various innovations on this salutary rule of the law of England have always met with just resistance; and the forms, carefully kept up as fresh "batches of silk gowns" were introduced into Westminster Hall, show that from the first it has been by the Judges, and not merely by the Crown, that the right of preaudience is really conferred.³ Out of proper regard for the business of the Crown, the King's Attorney-General and the King's Counsel have in *such business always had precedence and preaudience*. When Patents of precedence and preaudience came to be given to others than those appointed King's Counsel, the further innovation was

Form of
calling
within the
Bar.

¹ "Whether the Judges would be bound to obey an order from the Crown to hear one Counsel before another is a question. The Crown may exercise a prerogative that is *consistent with the usage of the Court*." Per Sir William Follett's arguendo in the Serjeants' Case.—Manning's Rep. 25.

² See *ante*, p. 5; and see *Collier v. Hicks*, 2 B. & Ad. 673.

³ See *post*, p. 208. The usage has always been, before any one of Her Majesty's Counsel takes his seat in Court, for the presiding Judge to formally call him *within the Bar*. This form is really the chief part of the ceremony in admitting a "new batch of silk gowns."

not generally heeded by the Bench or the Bar. The patents had simply no operation in the old Court of Common Pleas,¹ and certainly out of Westminster Hall they conferred no personal precedence.²

Precedence
of Counsel
for the
Crown.

The position of the Queen's Counsel is exceptional, but by the usage of Westminster Hall for many ages preaudience has been always given to the King's Attorney-General, on the assumption that he is engaged on behalf of the Crown. This is obviously the ground on which such preaudience was from the first given, and it seems clear that the claim of preaudience of any one of the King's Counsel was based on the assumption that the business of the Crown was actually concerned.

Rights de-
rived from
patents of
precedence.

The rights and privileges granted to members of the Bar *not being even nominally in the service of the Crown, by special patents of precedence,*³ are certainly more exceptional, if they do not altogether constitute an anomaly. The precedence and preaudience in the Courts at Westminster which Bacon and North derived from their *patents as King's Counsel* seem to have been confined to matters in which they actually appeared in

¹ See *ante*, p. 189.

² The mistakes often made on the subject of precedence render it necessary to observe that neither the *patents* we are referring to or those of Queen's Counsel, grant *precedence or place otherwise than as Counsel* in legal proceedings "in our Courts." The Attorney- and Solicitor-General have the front "place and audience in our Courts," see order of Prince Regent, 14th December, 1814, *ante*, p. 192; and the precedence and preaudience granted by the *patents of Queen's Counsel*, etc., clearly extend no further than the "Royal Courts of Justice." General or social precedence is legally regulated by general statutes and ordinances, ancient custom, etc., 31 H. 8, c. 10; Seld. tit. Hon. II. 5, 45, II. 11, 3; Camden's *Britannia*, tit. Ordines; and it is not within the power of special letters patent to alter this order. Such letters patent could not place a Marquis above a Duke, a Baronet above a Baron, an Esquire above a Knight or a Serjeant-at-law, even though having "*place in our Courts.*"

³ See *ante*, p. 203.

Court on behalf of the Crown,¹ and the Judges, out of regard to the King's business, gave them precedence. Long after the first appointment of *King's Counsel* extraordinary this innovation was followed by the other, which appears certainly altogether less warrantable, the conferring by Royal letters patent, on the grantee, not any office under the Crown, but personal preaudience and precedence in the King's Courts *altogether unconnected with the business or service of the Crown*. Such patents are now unusual. They were at first confined to the case of members of the House of Commons, who if appointed to office under the Crown as King's Counsel would have vacated their seats. The utility of such patents now does not appear. The Judges of the King's Bench and Exchequer always conceded to the holders of such patents the privileges of precedence and preaudience and sitting within the Bar just as if their patents had appointed them to be "of His Majesty's Counsel." The legality of such mere patents of precedence and preaudience has never really been called in question, though it seems not very easy to reconcile such concessions with the rules and principles of our law, which treats the whole power and authority over the proceedings and practice of the Courts as having been for ages given up by the Crown to the Judges.²

¹ See *ante*, p. 208.

² See on this, Coke's 4th Inst. 71. In the instances in which patents of precedence were at first obtained in lieu of appointments as King's Counsel, the position under the former had many advantages over the latter, which not only precluded the grantee from being Counsel against the Crown, but if obtained by a member of the House of Commons, at once vacated his seat. For these reasons Mansfield, Erskine, Eldon, and Brougham held patents of precedence instead of being made King's Counsel. The patents of precedence obtained by Serjeants-at-law have always been sought for out of other considerations. See *post*, c. viii.

Present
position of
the Ser-
jeants as
to pre-
cedence.

As regards the members of the old Order of the Coif the operation of patents thus conferring special precedence and preaudience on such a crowd of holders has been very prejudicial, and the course adopted with regard to the precedence of the Serjeants-at-law has been productive of very gross injustice.

We have seen how the Serjeants-at-law formed an essential part of the constitution of the Court of Common Pleas at the time even when that ancient Court was composed of the *Common Bench* of the Aula Regia, and during the many ages when it constituted the chief tribunal known to the common law of England. Whatever may have been the justification for first placing the Bar of the Court of Common Pleas on the same footing as the Bar of the other Courts of Westminster Hall, and ultimately altogether merging the ancient Court of Common Pleas by the Judicature Acts, there seems at all events hardly an excuse for placing the Serjeants-at-law, by the effect of these changes, altogether on a *worse footing* throughout Westminster Hall. The injury done to the time-honoured Order of the Coif by the change was evidently never seriously contemplated, and few of the present generation of lawyers are aware of the wrong which was thus unhappily occasioned.

Effect of
the man-
date of
1834 on
the posi-
tion of the
Serjeants.

Under the old system at Westminster Hall it must be recollected the Serjeants-at-law not only had the *precedence and preaudience*, but constituted the whole Common Pleas *Bar*—for the most part confining their practice to that Court, though having, with the rest of the Bar, the full right of audience in the other Courts. When in 1834 the late King's name was illegally used to alter the ancient constitution of the Court of Common Pleas,¹ the contrivers of that remarkable proceeding,

¹ See *ante*, p. 104.

after the shabby fashion of leaving a shilling to the heir by way of *disinheritance*, adopted the device of giving to the fifteen Serjeants of the hour¹ valueless personal rights of audience throughout Westminster Hall, as the small coin by which the whole Order of the Coif was to be deprived altogether of its ancient inheritance. The history from its cradle to its grave, of this most irregular and unwarrantable proceeding of the law officers of the Crown has been already given,² and we need not here recur to it further than to say that these designs have not altogether succeeded, and that neither the famous *mandate against* the old Order of the Coif illegally issued in the King's name in 1834, nor any of the several Acts of Parliament since passed for reconstituting the old Court of *Common Pleas*, have really destroyed the ancient and legitimate precedence of the Serjeants-at-law, or affected their position at the Bar or otherwise. The legitimate place and rank which belonged to the order when the Court of Common Pleas formed the *Common Bench of the old Aula Regia* continued to belong to the order during the many centuries when it formed a distinct Court, and can hardly be deemed to

¹ Lawes, D'Oyley, Peake, Arabin, Adams, Andrews, Storke, Ludlow, Scriven, Stephen, Bompas, Goulburn, Heath, Coleridge, and Talfourd,—most, if not all of them, eminent Serjeants, some of them very distinguished both at the Bar and on the Bench—not one of them certainly would have asked for the equivocal advantage of a “*patent of precedence*.”

² This curiously worded *mandate* states that “we are graciously pleased as a mark of our Royal favour to confer upon the Serjeants-at-law herein-after named, being Serjeants at this present time in actual practice in our said Court of Common Pleas, some *permanent rank and place* in all our Courts of Law and Equity,” and then goes on to order and direct that the above fifteen Serjeants shall from henceforth, according to their respective seniority among themselves, have *rank, place, and audience in all our Courts of Law and Equity* next after *John Balguy, Esq.*, one of our Counsel learned in the law.”

be confiscated, forfeited, or lost when the Court of Common Bench or Common Pleas has come again to form as it were a part of the older institution, and to be absorbed in the modernised Curia Regia,¹ Her Majesty's Supreme Court of Judicature. The innovations on the old position at the Bar of the Serjeants-at-law seem to be without legal warrant, and unjustifiable on any ground of *expediency*.²

Calling
within the
Bar.

The changes which have from time to time been made as to audience, preaudience, and precedence have very materially altered without improving the ancient constitution of the Courts of Westminster; and the modern practice of *calling within the Bar* seems hardly to be

¹ 36 & 37 Vict. c. 66.

² The Serjeants, who formed the only Bar of the Aula Regia, continued, when that great Court was broken up, to hold their old position in the chief tribunal, the Common Bench or Court of Common Pleas—with *exclusive audience*. In the King's Bench the ordinary King's Counsel had legal preaudience in Crown matters and by courtesy in other cases. When the three Courts were merged into one, the question of audience not being expressly dealt with by the Legislature, the legitimate claim of the Serjeants was, at all events in *common pleas* (or *ordinary business*), to have equal rights of audience with the Queen's Counsel, according to their respective seniority. Had this just arrangement been at once recognised, much of the confusion caused by *patents of precedence* would have been saved. The peculiar injustice of the mandate of 1834 with reference to the ancient rights of the Serjeants was, that while it professed to take away from the *whole order* the exclusive audience in the Common Pleas, it in no way settled the general question of preaudience and precedence in Westminster Hall, dealing only with the case of the fifteen Serjeants then in existence; see *ante*, p. 104. The whole order was arbitrarily *degraded*, and the mockery of *compensation* for this wrong awarded to the fifteen Serjeants of the day. When eleven years afterwards a special statute was passed to make up for this lawless proceeding of 1834, the question of the future preaudience and precedence of the Serjeants was not dealt with. Many very eminent men had been in the interim admitted to the order; and when in 1845 the Court of Common Pleas was legally opened to all the Bar, the Serjeants-at-law found themselves suddenly placed as well in the Common Pleas as in the other Courts, with *preaudience given them next after the junior of the long list of Queen's Counsel*, and positively with no provision made for giving them protection against endless encroachments by new patents.

founded on any sound principle.¹ In the ancient days of Westminster Hall, it appears clear that whilst all duly qualified apprentices of the law were admitted to plead at the Bar, the special privilege of a place *within the Bar* belonged only to those engaged on the part of the Crown, or enjoying some other high distinction.²

In the oldest of the Courts, the Common Bench, the Serjeants being the only recognised order of advocates had place and preaudience according to seniority. In the two other Common Law Courts, the *King's Bench* and *Exchequer*, the Serjeants did not ordinarily attend;³ and when the practice was adopted in those two Courts of formally *calling within the Bar* King's and Queen's Counsel extraordinary, the Serjeants would of course not be among the number of those so distinguished. The power of calling within the Bar was always in the presiding Judges;⁴ the distinction seems to have been at first conferred only on the Attorney-General and the other recognised Counsellors of the King, the Queen, and the Prince of Wales. It was then extended to the Readers,⁵ and at one time to all the Benchers of the Inns of Court, and at length to those appointed by letters patent to be the King's Counsel, on the assumption that they were Benchers elect.⁶

In the
Common
Pleas.

In the
Queen's
Bench and
Exchequer.

¹ This practice would seem wholly unknown before the present century. See *ante*, p. 184.

² See *ante*, p. 184.

³ See *ante*, p. 101.

⁴ See *ante*, p. 212.

⁵ The names of such as have read double shall be given to the Judges, who have promised to give them pre-eminence of hearing after Serjeants and Her Majesty's learned Counsel [i.e. the Attorney- and Solicitor-General].—Orders of the Judges and Benchers 36 Eliz., Dugd. Orig. 313.

⁶ It must be remembered that from the time of Francis North in 1668, already referred to, see *ante*, p. 198, to that of Mr. Hayward in 1845, every *King's Counsel* or *Queen's Counsel* were generally all elected Benchers of their Inns.

Serjeants-at-law in Court of King's Bench, etc.

The Serjeants-at-law were not so *called within the Bar* of the Courts of King's Bench or Exchequer, for the plain reason that they were considered not to form a part of the ordinary *Bar* of those Courts, being under an ancient obligation "to keep the Common Pleas Bar."¹ When in 1839 the Common Pleas Bar was by Act of Parliament placed on the same footing as that of the two other Common Law Courts, there was at once a clear right on the part of the Serjeants to be admitted like the *Queen's Counsel* within the *Bar* of these other Courts, as they always were in the Common Pleas as well as in the Court of Chancery;² but strange as it may seem, this obvious concession was only made to them after the lapse of a number of years.³

Improvements in the rules as to pre-audience, etc.

In the changes made in the practice of the Supreme Court much improvement on the old procedure has doubtless been made. In days not long gone by the rules adhered to with regard to the hearing of *motions* amounted sometimes to a denial of justice. *Gentlemen within the Bar* could, by virtue of their right of *pre-audience*, secure for themselves something very *like exclusive audience*; for even in Lord Mansfield's time it was felt that in applications to the Court of King's Bench by motion it was almost impossible to obtain a nearing unless a King's Counsel within the Bar was retained; and much that we hear of the evils of that

¹ *Ante*, p. 100.

² The Serjeants-at-law always sat within the Bar of the Chancery Courts and at Nisi Prius, etc.

³ This concession was at last made when the presiding Judges in Westminster Hall were Cockburn, Erle, and Pollock. Having myself taken an active part at Serjeants' Inn in the proceedings which led to this very just concession, I can fully vouch for the cordial and graceful manner in which it was made by the Judges of Westminster Hall to their Brothers of the Coif.—A. P.

time from the law's delay may be ascribed to the special privileges of King's Counsel.

In hearing motions, the old course at Westminster Hall was to begin with the senior Counsel within the Bar, and give audience to him as long as he had cases for hearing, and then to call on the next *senior*, and so on daily, as long as the Court sat, whatever cases might be from day to day kept waiting the turn for audience of other Counsel in the Court. This course being thought hard on the Junior Counsel, and found to be much harder on their clients, some reforms were introduced by Lord Mansfield which were less popular with the *Gentlemen within the Bar*, than *Gentlemen* of the *outer Bar*.¹ The new practice allowed each Counsel to move once only before the other Counsel were heard in their turn; and Blackstone and other writers give much praise to Lord Mansfield for his new practice of going through the Bar. A further reform of more questionable advantage gave on the last days of term the preaudience not to the gentlemen within the Bar, but to those in the *last row* behind, who passed off as the most junior, but often included some of the most experienced gentlemen behind the Bar.²

Pre-audience at one time a practical monopoly.

Lord Mansfield's reforms.

The tendency of modern improvement in the practice of the Law Courts is very much to neutralise the effect of arbitrary privileges of preaudience. The system is now being adopted of placing all contested proceedings and even some motions for *rules nisi* on lists to be disposed of in regular order, independent of any arrangements

Pre-audience now comparatively of little effect.

¹ See 1 Burrow's Reports, vol. 1, p. 57.

² This special reform of Lord Mansfield has been very often referred to. It certainly had more to recommend it than Bacon's "fancy," *ante*, p. 189, n. 1, about giving preaudience to sons of Judges, etc.

interfering with the due administration of justice. The exceptional *precedence* and preaudience professed to be given therefore by the letters patent from time to time obtained from the Crown seem in a fair way of being limited to a very small area of operation.

Course as
to judicial
appoint-
ments and
commis-
sions.

We have already had occasion more than once to refer to the innovations on the old rule of constitutional law in this country, which required the Judges to be selected from the Order of the Coif, and to show how deeply rooted this principle was, for our forefathers regarded it as a necessary precaution against the *administration of the law being entrusted to others than the men of the law*. A memento of this ancient rule is still preserved in the Serjeants-at-law being always included in the Circuit Commissions—indeed placed first in the quorum after Her Majesty's Judges.

CHAPTER VII.

THE ANCIENT HABITS AND OBSERVANCES OF THE ORDER
OF THE COIF.

THE subject of this chapter has already engaged our attention, and in recurring to it our chief point must be to present in its proper light (divested of the confusion caused by the mistakes and misstatements of careless or prejudiced writers), what must always be of moment to those interested in the history of the Bench and the Bar.

The ancient customs, usages and habits of the Judges and Serjeants of the Coif, like the immemorial forms of our Common Law, have always been respected, and the most sensible of law reformers have been careful to hold them in regard, and to prevent such relics of the past, such landmarks in the history of our legal institutions, being altogether lost sight of. Where ancient forms and observances are altogether ignored, the administration of justice is apt to get out of its course, and such has generally been the case when the ancient usages and traditions of Westminster Hall are forgotten. Even in the most unsettled times in this country it has been deemed *expedient* to retain the ancient forms and ceremonies belonging to the law and its administrators so sedulously kept up by our forefathers.¹

Regard of
the law
for old
customs.

¹ In the address to the new Serjeants appointed by the Parliament of the Commonwealth in 1648, Lord Commissioner Whitelock said, "It hath pleased the Parliament, in commanding these writs to issue forth, to

Antiquity
of the
costume of
the order.

The "habits" of the Judges and Serjeants of the Coif are for the most part sufficiently old. The coif itself we have seen dates so far back as greatly to puzzle and mislead those who have attempted to trace its origin: and the robes of the order are referred to by Chaucer in the fourteenth century as already of ancient fashion.¹ They seem to have been, from an early time, the subject of strict regulation. The custom of the Serjeants-at-law going to *St. Paul's in their habits*, is one of the oldest on record.²

The
ancient
habits of
the order.

Fortescue describes the coif as "the chief insigne of habit" of Serjeants-at-law,³ but he gives also a special account of the proper robes and habits of the order,⁴ and in all the forms of discharge "*a statu et gradu servientis ad legem*" we find a formal release from the obligation to wear the coif or the other *habits* of the Serjeant-at-law.⁵

manifest their constant resolution to continue and maintain the old and settled form of government and laws of this kingdom." See the address, Whitelock's Memorials, 352.

¹ "For his science, and for his high renoun,
Of fees and robes had he many on."

—Chaucer's 'Canterbury Tales,' Prologue 'the
Serjeant of the lawe,' 9, *ante*, p. 3.

² See Fort. De Laud. c. 51.

³ *Ante*, p. 3.

⁴ See *infra*.

⁵ The discharge of Serjeant Rokeby of the office, state, and degree of Serjeant-at-law, on being appointed in 1555, 2 & 3 P. & M., one of the Justices and Commissioners in the North, after releasing him from all attendance and service as a Serjeant-at-law, goes on to say—"and also we release and discharge you by these presents of and from wearing any quayf commonly called a Serjeant's quayf, and of and for wearing all other apparel, garments, vestures and habits that by the laws and customs of this our Realm ye should or ought to wear or use for that he be Serjeant-at-law;" and nearly the same form was adopted in the discharge of Serjeant Fleming, who in 1595 was made Solicitor-General by patent, 5th Nov. 37 Eliz. p. 9, Dugd. Chron. Ser. 99. See *ante*, p. 17.

Among the State papers at the end of the reign of James I., is one noting the proper robes and apparel of the Judges and Serjeants-at-law,¹ and ten years after there was a *solemn decree* with special regulations made as to the robes to be worn both by Serjeants and Judges, in order to establish certainty and uniformity for the future.²

In the existing costume of the Bench and the Bar in this country, it is not very difficult to trace the course of innovation—to mark the old and genuine stamp, the judicial and forensic *insigne* of *habit* well known in Westminster Hall for so many ages, and the *habiliments* capriciously introduced there in accordance with the prevailing fashion of the hour, and adhered to long after they had become altogether *outré*.

Ancient and modern forensic habiliments.

Up to the fourteenth century changes in the fashions of dress in this country seem to have been but slow. The King, the Justice, the Noble, the Merchant and the Peasant, had a sufficiently distinctive costume, but like the monkish garb, it was of uniform cut and colour. At

Great change in costume in the fourteenth century.

¹ Discourse on what robes and apparel the Judges are to wear, and how the Serjeants-at-law are to wear their robes, and when.—Document in State Paper Office, 1625–6.

² “There having been such variations in those ancient times as I have instanced; and more afterwards as it may seem; for certainty therefore as well as uniformity in their habits, there was a solemn decree and rule made by all the Judges of the Courts at Westminster, bearing date the fourth day of June, 1635; Sir John Brampton, Knt., being then Chief Justice of the King’s Bench, Sir John Finch, Chief Justice of the Common Pleas, and Sir Humphrey Davenport, Chief Baron of the Exchequer, subscribed by them, and the rest of the Judges in those Courts, appointing what robes they should thenceforth use, and at what times.”—Dugd. c. 38, p. 101, where these regulations are set forth at length, and it will be seen distinctly to apply to the whole order of the Coif, the Judges as well as the Serjeants. And at the same date we find a memorial by the Judges as to the new Serjeants wearing parti-coloured robes for one year after their creation.

this period, however, various circumstances contributed to produce great changes of fashion. The progress of art had effected great improvements in the materials and fashion of dress, the furs of various animals were found most available for the purpose, and we hear for the first time of robes and cloaks and hoods, faced with ermine and minever to show pre-eminence over those whose garments were lined or faced with *lamb-skin* or *budge*.

Great
change of
dress in
the four-
teenth
century.

The fourteenth century marked great changes in private, as well as in official costume. We then find a number of statutes dealing not only with the question of *excess of apparel*, but with the mischiefs and disorders from the giving of liveries to innumerable *retainers*, enlisted as partisans and maintainers of strife.

The robes
and liveries
of re-
tainers.

At the period just referred to, very distinct changes were made in the fashion of dress; and from the *robes* and *liveries* of the King and the magnates of the realm and their *retainers*, to the *liveries* of the municipal guilds, fraternities, and companies, we can observe almost every colour, and every phase of fashion and device; cloths of scarlet and russet and blue, and hoods of violet, ray, and purple, and furs of minever or *powdered ermine*, lamb-skin, and budge. These are all mentioned in the Crown accounts,¹ and we have ample proof of such items of expenditure in the household books of great families and municipal bodies.² Stow³ gives us the account of the cofferer to Thomas, Earl of Lancaster, in 1314, charging

¹ The *Liber Garderobæ* of Edw. I., printed and published by the Antiquarian Society in 1787, contains minute entries as to the allowance of these materials for robes.

² *E.g.*, the Northumberland, *post*, p. 221, note 1.

³ Stowe's 'Survey of London.' (Customs of greater families and households, in former times.)

him with cloths of scarlet for the Earl himself, of russet for the Bishop, blue for the knights, medley for the clerks, and numberless other cloths for the esquires, officers, grooms, archers, minstrels, etc., included in the list of the Earl's *liveries*.¹ In old account books, published by the Antiquarian and other societies, we have full proof of these endless uniforms;² and in the statutes against *giving liveries and retainers*, from the time of Richard II. to Henry VIII., special exception is made of the *retainers*, or giving livery of cloth to a man learned in the law.³

¹ In the Northumberland household book and various books already published of the privy purse expenses in old times, we have full accounts of the fashion and cost of the ancient robes and liveries. The old ballad, 'Time's alteration,' tells us how—

"The nobles of our land
Were much delighted then,
To have at their command
A crew of lusty men,
Which by their coats were known,
Of tawny, red or blue,
With crests on their sleeves shown
When this old cap was new."

² As elsewhere noticed, laws were made to restrain the number of the *liveries* and *retainers* and *maintainers* of great men, and the usage as to *livery servants* alone survived as a remnant of the past.

³ 1 Hen. IV. c. 7; 8 Edw. IV. c. 2. The parti-coloured dresses so much worn in the fourteenth and fifteenth centuries in most cases served to denote the *livery* of the Royal or noble house of which the wearers were the *retainers*. The livery colours of the house of Plantagenet were red and white, of Lancaster blue and white: and the latter is conspicuous in many of the parti-coloured dresses up to the time of Henry VI., and the fashion changed soon after; and in one of the Paston letters, referring to the coming of Edward IV. to Norfolk, and "making sure of his good Lordship in time to come," Sir John Paston says "he shall have 200 in a livery, blue and tawny, and blue on the left side, and both dark colours."—Fenn's Paston Letters, vol. ii. p. 22, letter 27. In the illuminations of the Courts at Westminster, already referred to, the Serjeants-at-law have parti-coloured and rayed robes of various colours, the blue being most conspicuous, but of what illustrious house they were then retainers does not appear.

Short robes
and gentle-
men of the
long robe.

Fashion in the fourteenth century affected the shape as well as the colour of dresses. The extravagances in this respect, in the time of Edward III., made English people of good position indulge in such eccentricities of apparel, as to induce the writers of that time to pronounce it "destitute and devest of all honesty of old array,"¹ and the then new fashion of short robes, originally imported from Spain, seems to have prevailed simultaneously in France and Italy as well as in England; so much so, as to give to the wearers the name of 'Gentlemen of the short robe,' whilst the Judges and Serjeants and Doctors of the Law, who yielded not to such fopperies, seem thus to have first acquired the designation of '*Gentlemen of the long robe*.'²

Ordinary
habili-
ments of
the Ser-
jeants in
fifteenth
century.

The *Gentlemen of the long robe* in the fifteenth and part of the sixteenth century, doubtless, indulged in the use of the medlee cote spoken of by Chaucer;³ and in the

The privilege of giving liveries on a large scale was specially permitted on great occasions, the statutes referred to above not extending to liveries given at coronations, installations, the creation of Peers, Knights, or Serjeants-at-law. See 8 Edw. IV. c. 2.

¹ A writer of the time of Edward III., Douglas, the Monk of Glastonbury, says that—

"The Englishmen haunted so much unto the folly of strangers, that every year they changed them in divers shapes and disguisings of clothing, now long, now large, now wide, now strait, and every day clothinges new and destitute and devest from all honesty of old arreye or good usage; and another time to short clothes and so street waisted, with full sleeves and tapetes (tippets) of surcoats and hodes over long and lerge, all so nagged (jagged) and knit on every side, and all so shettered, and also buttoned, that I with truth shell say they seem more like to tormentors or devils in their clothing and also in their shoyng (shoeing), and other aray, than they seemed to be like men."

² The French pleaders or gens de Palais were also known as gens de robe.

³ See *ante*, p. 218:

"He rode but homely in a medlee cote
Girt with a seint of silk with barres small,
Of his array tell I no longer tale."

—Cant. Tales, Prol. 1462.

old picture of the Court of Common Pleas,¹ the Serjeants-at-law appear in *parti-coloured* robes, but on state occasions this parti-coloured dress was evidently not recognised as belonging to "the apparel, garments, vestures, and habits that by the laws and customs of the realm, Serjeants ought to wear."²

From the days of Edward III. to those of Queen Elizabeth, the *excess* of apparel appears to have been the subject of trouble to the Legislature quite independent of any question as to *liveries* and *retainers*; and Coke enumerates a score of Acts of Parliament, commencing in 1337 and ending in 1570, with a string of rules as to the costume of people in different ranks—who might be clothed in silk, who might have their cloaks or gowns or robes faced with gold or silver or fur, and what furs might be worn, from ermine to budge.³

Laws as to
excess of
apparel.

¹ See frontispiece. In this picture it will be seen the Serjeants have their coifs like the Judges, but whilst the latter have their long robes and tippets or capes of red, those of the Serjeants are rayed half blue and half green, and the inferior officials have their short gowns of mustard, etc.

² See *ante*, p. 17.

³ Coke's 3rd Institute, 199. The 13 Edw. III., c., passed in 1337, provided that no man or woman of England, Ireland, Wales, or Scotland within the King's power, of what estate or condition that he be (the King, Queen, and their children, the Prelates, Earls, Barons, Knights and Ladies, and people of Holy Church, with benefices of £100 a year, only excepted) should wear any fur in their clothes. The only fur in ordinary use for robes up to the end of the thirteenth century, seems to have been *budge*, or dressed lamb-skin. The beautiful furs then first imported, ermine and minever, which were used as facings for robes, soon came to be deemed the fit decorations of high rank—the Chief Justice like the Royal family and the Peers—whilst it was the privilege of the puisne Judge to wear minever on his cape, and in time the *minever* on the Judge's cape came to be the chief distinction from that of the ordinary Brothers of the Coif. To use Fortescue's words, "after he is made a Judge, instead of the Hood he shall be habited with a cloak, fastened upon his right shoulder. He still retains the other ornaments of a *Serjeant*, with the exception that a Judge *shall not* use a parti-coloured habit, as the Serjeants do; and his cape is furred with *minever*, whereas the Serjeant's cape is always furred

The proper
robes of
the order.

The ancient and legitimate costumes of the order (Judge or Serjeant), according to Fortescue, consisted not only of the *chief insigne, the coif*, but of a long priestlike robe with a furred cape about the shoulders, and a hood.¹ The woodcuts already given from the monumental effigies in Long Melford, of Sir William Howard in 1293, and the two Brothers of the Coif, Judge and Serjeant, in the fifteenth century, display very clearly in each case the long priestlike robe with the furred cape mentioned by Sir John Fortescue. We have abundant other evidence of the old and legitimate robes of the Serjeant-at-law; and in the 'Vision of Piers Ploughman'² written about 1369, the old poet speaks of the Serjeant pleading at the bar in his *houve*, or *coif of silk*, and *peleasè* on his cloak.³

Extent of
changes.

The Serjeants' robes seem from time to time to have varied *in colour rather than in form*. The changes of fashion, of which we hear so much, in the fourteenth century bringing into general use the "extravagant shapes and disguisings" spoken of by the writers of the day, for the most part left unaltered the ancient shape

with lambswool, which sort of habit, when you come into power, I could wish your Highness would make a little more ornamental in honour of the laws." Fort. De Laud. Leg. Ang. c. 51.

¹ "A Serjeant-at-law is clothed in a long robe not unlike the sacerdotal habit, with a furred cape, *capicium penulatum*, about his shoulders, and a hood over it, with two lapels or tippets, such as the Doctors of Law use in some Universities, with a coif as is above described."—Fort. De Laud. Leg. Ang. c. 51.

² "Shall no Serjeant for his service wear no silk *houve* nor *peleas* on his cloke for pledynge at the barre." Langeland, the author, intended 'Piers Ploughman's Vision' as a satire on ecclesiastical vestments, being himself a loyal disciple of Wickliffe, the Morning Star of the Reformation.

³ Mr. Planche refers on this subject to the figures given by Dugdale (see *ante*, p. 78) and to a contemporary MS. in the possession of the Earl of Ellesmere, where a Serjeant-at-law is represented in his gown of scarlet and blue, his furred hood, and his white coif (or *houve*) of silk.

and form of the costume of the Judges and Serjeants, and in the orders and rules of 1635, already referred to, the directions as to the costume of the Judges and Serjeants of the Coif are very minute.¹

¹ "The Judges in Term time are to sit at Westminster in the Courts, in their Black or Violet Gowns, whether they will; and a Hood of the same colour put over their heads, and their Mantles above all; the end of the Hood hanging over behind; wearing their Velvet Caps, and Coyfes of Lawn, and cornered Caps.

"The facing of their Gowns, Hoods, and Mantles, is with changable Taffata; which they must begin to wear upon Ascension Day, being the last Thursday in Easter Term; and continue those Robes until the Feast of Simon and Jude: And upon Simon and Jude's day the Judges begin to wear their Robes faced with white furs of Minever; and so continue that facing till Ascension Day again.

"Upon all Holy dayes which fall in the Term, and are Hall dayes, the Judges sit in Scarlet faced with Taffata, when Taffata facing is to be worn; and with Furs of Minever, when Furs of Minever are to be worn.

"Upon the day when the Lord Mayor of London comes to Westminster to take his oath, that day the Judges come in Scarlet. And upon the fifth of November (being Gunpowder day), unless it be Sunday, the Judges go to Westminster-Abby in Scarlet to hear the Sermon; and after go to sit in Court. And the two Lords Chief Justices, and the Lord Chief Baron, have their Collars of SS. above their Mantles for those two days.

"When the Judges go to Pauls to the Sermon, upon any Sunday in the Term time, or to any other publick Church, they ought to go in Scarlet Gownes; the two Lords Chief Justices, and the Lord Chief Baron in their Velvet and Satin Tippetts; and the other Judges in Taffata Tippetts; and then the Scarlet Casting Hood is worn on the right side, above the Tippetts; and the Hood is to be pinned abroad towards the left shoulder. And if it be upon any grand dayes, as upon the Ascension day, Midsomer day, All Hallow day, or Candlemass day, then the two Lords Chief Justices, and the Lord Baron wear their Collars of SS. with long Scarlet Casting-Hoods and Velvet and Sattin Tippetts.

"At all times, when the Judges go to the Council-Table, or to any Assembly of the Lords; in the After-noons in Term time, they ought to go in their Robes of Violet, or Black, faced with Taffata, according as the time of wearing them doth require: and with Tippetts and Scarlet Casting-Hoods, pinned near the left Shoulder, unless it be a Sunday, or Holy day, and then in Scarlet.

"In the Circuit the Judges go to the Church upon Sundays, in the fore-noon in Scarlet Gownes, Hoods and Mantles, and sit in their Caps. And in the after-Noons to the Church in Scarlet Gownes, Tippet and Scarlet Hood, and sit in their cornered Caps.

"And the first Morning at the reading of the Commissions, they sit in

The *priestlike* robe, the furred cape, and, as Fortescue describes them, the *other ornaments of a Serjeant*,¹ are still worn by the Judges, as well by those who actually belong to the old order, as by Judges appointed since the Judicature Act and who have not taken the *degree of Serjeant-at-law*;² and very recently the example has been set by the Chief Justice of England, and followed

Scarlet Gowns, with Hoods and Mantles, and in their Coyfs and cornered Caps. And he that gives the chardge, and delivers the Gaol, doth, or ought for the most part, to continue all that Assizes the same Robes, Scarlet, Gown, Hood, and Mantle. But the other Judge, who sits upon the Nisi prius, doth commonly (if he will) sit only in his Scarlet Robe, with Tippet and Casting-Hood: or if it be cold he may sit in Gown, and Hood and Mantle.

“And where the Judges in Circuit go to dine with the Shireeve, or to a publick Feast, then in Scarlet Gowns, Tippets, and Scarlet Hoods, or casting off their Mantle, they keep on their other Hood.

“The Scarlet Casting-Hood is to be put above the Tippet, on the right side; for Justice Walmesley, and Justice Warburton, and all the Judges before, did wear them in that manner; and did declare that by wearing the Hood on the right side, and above the Tippet, was signified more temporal dignity; and by the Tippet on the left side only, the Judges did resemble Priests. Whensoever the Judges, or any of them are appointed to attend the King’s Majesty, they go in Scarlet Gowns, Tippets, and Scarlet Casting-Hoods; either to his own presence, or the Council Table.

“The Judges and Serjeants when they ride Circuit, are to wear a Serjeant’s Coat of good Broad-Cloth with Sleeves, and faced with Velvet.

“They have used of late to face the Sleeves of the Serjeant’s Coat, thick with lace. And they are to have a Sumpter, and ought to ride with six men at the least.

“Also the first Sunday of every Term and when the Judges and Serjeants dine at my Lord Mayor’s, or the Shireeve’s, they are to wear their Scarlets, and to sit at Pauls with their Caps at the Sermon.

“When the Judges go to any Reader’s Feast, they go upon the Sunday or Holy day in Scarlet: upon other days in Violet, with Scarlet Casting-Hoods, and the Serjeants go in Violet, with Scarlet Hoods.

“When the Judges sit upon Nisi prius in Westminster, or in London, they go in Violet Gowns, and Scarlet Casting-Hoods and Tippets, upon Holy days in Scarlet.”—Dug. Orig. p. 101.

¹ See *ante*, p. 223, note 3.

² 36 & 37 Vict. c. 66, s. 8. See *ante*, p. 41.

by most of the other Judges when sitting at Nisi Prius, of reviving one of the ancient ornaments of the Judges and Serjeants of the Coif long disused.¹

With regard to the *colours of the robes and vestures* of the Judges and Serjeants, we find much variation. The accounts of the King's Wardrobe show allowances to the Judges of scarlet, minever, and green cloth, "violet in grayn," etc.;² and the Serjeants had to provide themselves with similar robes. At a call of Serjeants in October, 1555, every Serjeant subscribed for one robe of *scarlet*, one of *violet*, a third of *brown blue*, a fourth of *mustard and murrey*, with tabards of cloths of the same colours; and in the pictures already referred to, though the Serjeants have on their parti-coloured gowns with the coifs, we find the Judges belonging to the order habited in scarlet, whilst the Barons of the Exchequer and Masters in Chancery, neither of them of the Order of the Coif, are habited in robes of mustard colour.

Colour of
the Judges'
and Ser-
jeants'
robes.

Colour of
the Ser-
jeants'
robes, etc.

¹ The scarlet casting-hood, now recently brought back into use by the Judges at the Nisi Prius sittings, is in accordance with the rule as to robes made in June 1635, one of which directed that "when the Judges sit upon Nisi Prius in Westminster or in London, they go in Violet Gowns and Scarlet Casting-Hoods and Tippetts, upon Holy days in Scarlet." See Dugd. Orig. ch. xxxviii. p. 102. We have already seen that the hood forms an especial part of the insigne of a Serjeant, *ante*, p. 224. Fort. c. 51.

² The King's Wardrobe was a State establishment for procuring, fashioning, and safe keeping not only the Royal robes, but those of the Judges and grand officers of the State and the Court. The Keeper of the King's Wardrobe received his orders sometimes in a very formal manner, *e.g.* in allowing robes to the Judges. See Rot. Claus. 20 Edw. III. p. 1, sec. 15; Rot. Compt. Crest. Mag. Garderobæ, 21 Edw. III.; Dugd. Orig. 98. The King's Great Wardrobe was a very grand establishment, situated near St. Paul's, the place being built in 1359 by Sir John Beauchamp, and in 1485 used as a lodging for Richard III. The Keeper or Master of the Wardrobe was a high officer. In Stow's time, Sir John Fortescue held the office, and had the custody of State papers there.—Stow's London: Castle Baynard Ward. The office of Keeper of the King's Wardrobe was abolished in 1707.

Parti-
coloured
dresses.

The *regulations* as to the *colours* of the robes of Judges and Serjeants of the Coif was distinct enough, but the middle of the fourteenth century, by the caprices of fashion, brought into general use *parti-coloured* garments, which survived all the legal provisions against the giving of liveries, etc.,¹ and lasted until the days of Henry VIII. These strange fashions were in vogue not only here, but on the Continent, during more than a century; and seem to have been used by men of the highest rank,² as by those of altogether inferior position,³ and certainly the clergy from a very long time back. Parti-coloured raiment was going altogether out of use in the time of Henry VIII. The more ancient usage among the Judges and Serjeants of wearing less variegated robes was observed, and not very long after, strict provisions were made for this rule of dress being adhered to.⁴ The robes were required to be of red, violet, or black, though the cape as well as the hood was of a different colour, and the border, according to fixed rules, with budge, minever, or ermine.⁵

¹ See 1 Ric. II. c. 7; 20 Ric. II. c. 2; 1 Hen. IV. c. 7; 7 Hen. IV. c. 14; 8 Edw. IV. c. 2. These statutes were for the most part aimed at the maintainers of suits and other unlawful partisans who wore the clothing or livery of their lords or fraternity.

² In the Cotton MS. Nero, D. VI., there is an illumination representing John of Gaunt sitting in judgment on the disputed claims at the coronation of Richard II., and that great Duke's long robe is parti-coloured, one half being blue and the other white, the colours of the House of Lancaster. An engraving of this, will be found in Strutt's '*Royal and Ecclesiastical Antiquities*,' p. 17. William of Malmesbury speaks of Alcuin telling Archbishop Cuthbert that when he should come to Rome to visit Charlemagne he should not bring the clergy and monks dressed in parti-coloured or gaudy garments, for the clergy are, like Franks, dressed entirely in ecclesiastical habits. In the Parson's tale, Chaucer represents the Parson in a parti-coloured dress, half red and half white, which the poet sufficiently ridicules.

³ See the picture of the Court of Common Pleas in the frontispiece.

⁴ See *ante*, p. 224.

⁵ The familiar expressions, ermined Judge, Judicial ermine, etc., are apt

The *cape* and *hood* from an early time formed part of the robes of the Judges and Serjeants-at-law, being delivered to them as soon as the coifs were put on their heads.¹ It would seem as if this cape, like its Spanish original, was at first a short cloak, worn quite separated from the gown or robe, but in course of time made to form a part of the dress of the order. Fortescue speaks of the furred cape about the shoulders of the Judges and Serjeants, with the hood over, among the chief ornaments of the order,² and tells us that in his time this *furred cape* differed only in the case of the Serjeants from that worn by the Judges in the circumstance that the Judge's cape was furred with minever whilst the Serjeant's cape (as long as it was in use) was usually furred with *white lamb-skin*³ or *budge*. The furred cape of the Serjeants

Cape, and
Hood.

to suggest mistakes as to the furs used by the Judges in old times. Budge or lamb-skin was evidently the most usual border for the robes for many centuries. The allowances to the Judges out of the King's Wardrobe of *fur of white budge* as of silk taffata for their robes, as well as of minever for their hoods, are fully recorded in Rot. Claus. 20 Edw. III. p. 1, m. 15; Rot. Compt. Custodis Magnæ Garderobæ, 21 Edw. III.; and wardrobe accounts of 22 Hen. VI., quoted by Dugdale, c. 38, p. 99. The robes of each of the seven Judges of the Common Pleas, in the picture we have of that Court in the frontispiece, are faced with white budge.

¹ See on this Dugd. Orig. 118, account of call to the coif Hil. 1 Edw. VI.

² "When only a Serjeant-at-law he is cloathed in a long robe not unlike the sacerdotal habit, with a furred cape about his shoulders (capitium penulatum desuper collabium super humeralia) and a hood over it, with two lapels or tippetts such as the doctors of law use in some universities, with a coif as is above described; but after he is made a Judge, instead of the hood he shall be habited with a cloak fastened upon his right shoulder."—c. 51, p. 118. The learned annotators of Fortescue describe this cape as a short cloak furred on the cape with a cowl tippet or hood over, and elaborates the description by reference to the shoulder covering of the mountaineers, the soldier's sash, and the ecclesiastical *rochet*.

³ The Judge still retains the other ornaments of a Serjeant with this exception, that a Judge shall not use a party-coloured habit as the Serjeants do, and his cape is always furred with minever, whereas the Serjeant's cape is always furred with *white lamb*; which sort of habit when you come in power I wish your Highness would make a little more ornamental."—c. 51, p. 120.

as well as that of the Judges are spoken of by "Piers Plowman," and by Chaucer and other writers of the fourteenth century.¹

Use of the
cape by the
Judges.

The cape does not appear to have been usually worn in Westminster Hall by any of the order. In the *illuminations* of the Courts in Fortescue's time neither the Judges or Serjeants appear in their *furred capes*, and the only fur displayed is the facing of *white lamb-skin* or budge on the robes of the Judges on the Bench.²

The black
cap.

There is one part of the dress belonging to the Order of the Coif—the *black cap* or *sentence cap*—of which we have little account, though so many mistakes have been made about it.

Most of our readers know that the Judges in capital cases put on the *black cap* when passing sentence of death, but beyond this they have hardly any information, and a few words on the subject may here be opportune.

The black cap, or *sentence cap*, of the Judges and Serjeants is certainly not the *coif*, as Lord Campbell thought proper repeatedly to state.³ It is, on the

¹ See *ante*, p. 224, note 2, Selden's notes to Fortescue, *ut sup.*, and Dufresne voce Capitium.

The allowances to the Judges of "hoods of minever" (each containing so many "bellies" of minever) are recorded in the time of Edw. III.: see Dugd. 103; and the expenditure of the Serjeants on lamb-skin for their capes has been already referred to, *ante*, p. 220.

² See the picture of the Court of Common Pleas in the frontispiece. In the old illumination of the Court of Chancery the tonsure is displayed by all those on the Bench except the chief, who has with his red gown a cape lined with white fur. The Lord Chancellor of that time was Kempe, Archbishop of York and Canterbury, and Cardinal.

³ "It was to conceal the want of the clerical tonsure that the Serjeants-at-law, who soon monopolised the practice of the Court of Common Pleas, adopted the coif, or *black velvet cap*, which became the badge of their order."—"Lives of Chief Justices," vol. i. p. 72. "In the middle of the 17th century the common law judges adhered to their coifs, or black cloth caps, which they still put on when they pass sentence of death."—*Id.* p. 482.

contrary, the covering expressly assigned to veil the coif, on the only occasion when the coif was required to be *hidden*.

By the ancient privileges of the Serjeants the coif was not to be taken off even in the Royal presence.¹ The chief insigne of the order, it was, as we have seen, to be so displayed when sitting on the Bench or pleading at the Bar, but this rule seems always to have been departed from in passing sentence of death. The head of the administrator of justice was then covered or veiled as a token of sorrow² by the *black sentence cap*.

The coif
and the
black cap.

The *cornered caps* are very distinctly spoken of by Dugdale as the head covering which the Judges and Serjeants then always used when attending church in state (at St. Paul's, or on circuit), or at the reading of the Commission, or presiding at the trial of prisoners.³

The
cornered
caps.

The cornered cap, black cap or *sentence cap*, is but a limp cap of black cloth used as a veil or head-covering. After conviction of a malefactor for a capital offence the

¹ See *ante*, p. 16.

² The veiling or covering the head as a token of mourning or sorrow real or affected, is a usage of very great antiquity, having been always observed in Eastern countries. See on this 2 Samuel xv. 30, xix. 4; Jeremiah xiii. 3-4; Esther vi. 12; and it is remarkable that the custom of veiling or covering the head was used also in the case of the malefactor condemned to death, whose head was immediately hooded as unworthy of the common light, whilst being carried away to execution. See on this notes in D'Oyly and Mant's Bible, Esther, c. 7.

³ "On the Circuit the Judges go to church on Sundays in the forenoon in scarlet gowns, hoods and mantles, and sit in their caps, and in the afternoons to the church in scarlet gowns, tippet, and scarlet hood, and sit in their cornered caps."

"And the first morning at the reading of the Commissions they sit in scarlet gowns with hoods and mantle, and in their coifs and cornered cap."—Dugdale, Orig. c. 38, p. 101.

"Also the first Sunday of every Term, and when the Judges and Serjeants dine at my Lord Mayor's or the Shireeves, they are to wear their scarlets, and to sit at Paul's with their caps at the Sermon."—*Id. ib.* 102.

Judge assumes the *black cap* over his coif and wig, and pronounces the dread sentence of the law. The sentence cap is rarely put on except on these occasions, but when the Judges or Serjeants sit in the Criminal Courts they always carry the sentence cap as part of their regular judicial attire, and when attending divine service at St. Paul's or elsewhere in state the black cap is carried in the hand.¹

Adherence
to the
ancient
robes of the
Order of
the Coif.

Much of the ancient costume of the Order of the Coif, of what Dugdale describes as the *ornaments of a Serjeant*, is still in use. It forms part of the robing of the Judges of Her Majesty's Supreme Court of Judicature, who, excused from the obligation to belong to the ancient order, adopt *honoris causâ* its vestments in memory of the past. Changes have been made from time to time in the costume adopted in Westminster Hall, but most of such changes have been of temporary use compared with the ancient robes and *ornaments* of the order. The fashions as to furs have changed,² and parti-coloured garments have been out of use for more than three hundred years.³ The hats and caps which appear in the pictures of lawyers up to the end of the seventeenth century,⁴ then gave way to the conceit of false hair, and the Court dress of the Bench and the Bar came to be fashioned exactly after the mourning costume of the days of William III. and Queen Anne.

Up to the end of the seventeenth century there was not in Westminster Hall, except the prescribed dress of the

¹ In the days of strict religious ceremony, and especially when there were prayers for the dead, the Brothers of the Coif probably wore cornered caps more frequently than in aftertimes.

² See *ante*, p. 226.

³ See *ante*, p. 227.

⁴ The picture of Lord Coke at p. 188, has the cap over the Serjeant's Coif.

Judges and Serjeants, any costume officially recognised, other than that in ordinary use in the *Hall* of the Inns of Court—the cloth or stuff gown of the Utter Barrister, and the one with black velvet and tufts of silk which was worn by the Readers and Benchers.¹ The silk gown costume therefore, which came into use at the funeral of the daughter of James II., afforded to the leaders of the Bar a convenient opportunity of establishing a uniform specially belonging to themselves. By general consent they adopted the black Court dress and silk gown introduced nearly two centuries ago as mourning, and have kept to it for their forensic costume ever since.

The late Sir Frederick Pollock is said to have expressed an opinion in reference to the ordinary costume of Westminster Hall, that the Bench and the Bar went into mourning at the death of Queen Anne, and have so remained ever since. Chief Baron Pollock's humorous explanation of the sombre character of the modern costume of the Bench and the Bar is not very far from the actual truth. The Court dress—black silk gowns and long wigs—if not first brought into use at Queen Anne's funeral, certainly only came into fashion about the time of her elder sister's death.

The black silk robes and Court dress.

¹ See notes to 'Ignoramus, a comedy enacted by the Scholars of Cambridge before King James I. and Prince Henry, by John Sydney Hawkins, 1788,' where he says of the Benchers' gown that, "The gown now used is undoubtedly not that belonging to their profession. The ancient gown was probably of cloth, and was undoubtedly faced with black velvet, and had on it tufts of silk down the facings and on the fronts of the arms. *This is still the proper dress* and recognised as such; for it is observable that on BIRTH DAYS the King's Counsel appear at Court, in gowns exactly answering this description, and this continued invariably to be the constant dress of an advocate till the death of Queen Mary in 1694, at which time the present gown was introduced as mourning on the occasion, and having been found more convenient and less troublesome than the other, has since been continued."

Changes in
costume at
end of
seven-
teenth
century.

The latter end of the seventeenth century produced very remarkable changes both in legal and Court costume. The fashion which came into vogue under Charles II.,¹ of having long artificial hair, was followed by the use of hair-powder; and the *Gentlemen of the long robe* adopting the then new fashion, came to be known as the *Gentlemen of the long wigs*.

The long
wigs.

The peruke was apparently the greatest extravagance of dress indulged in immediately after the Revolution. It was so large as nearly to hide the countenance. It was frosted with powder,² and it would seem as if a long wig was received in Westminster Hall as in itself a mark of rank; for we are told by writers of the time it was considered the height of human insolence for the *Counsellor* to have used as large a wig as a Judge, or an Attorney as a Counsellor.³

The Ser-
jeant's
coif under
the wig.

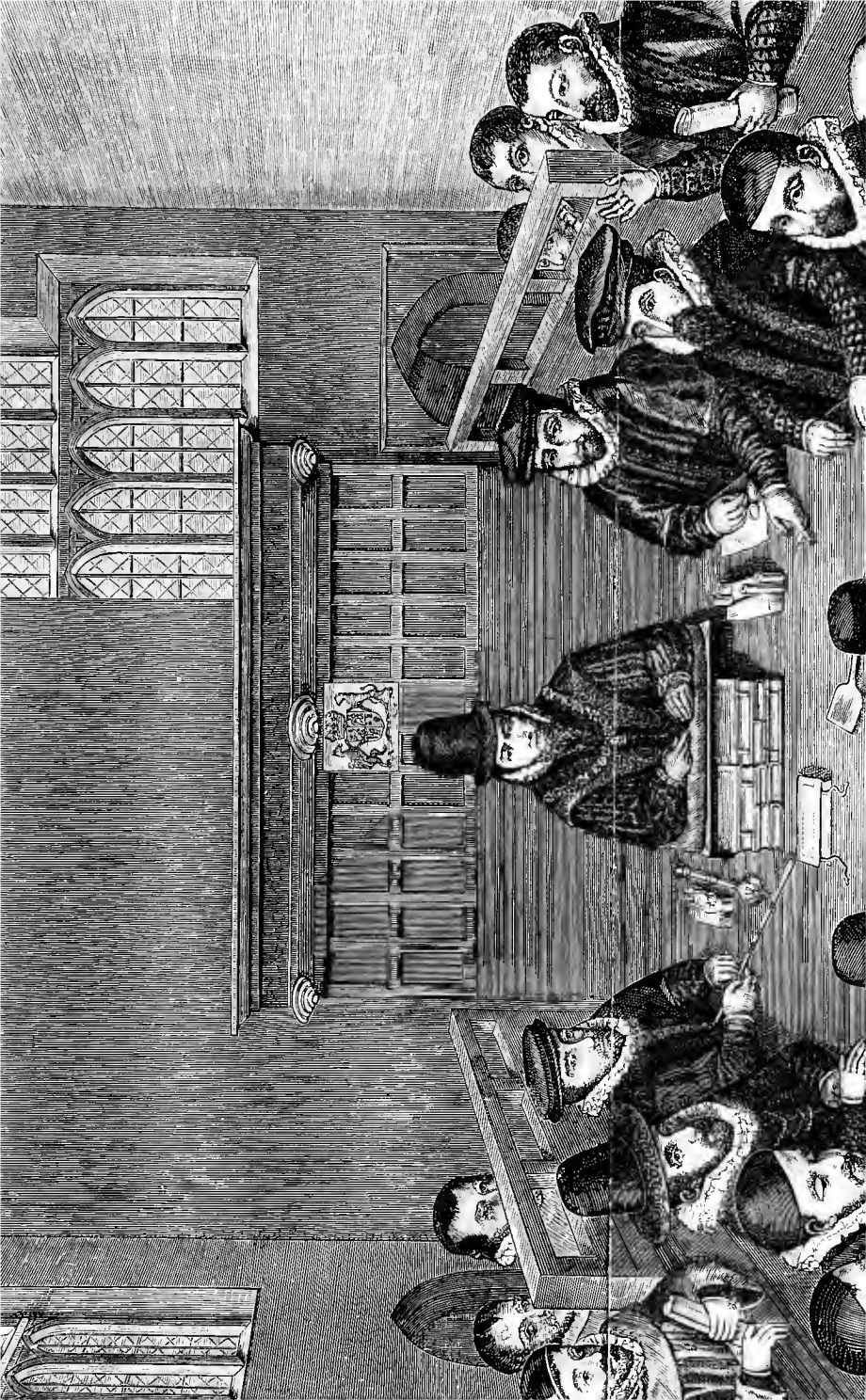
We have already referred to the effect of this change of head-dress on the "chief insigne" of the Serjeants-at-law—the coif⁴—and it is unnecessary to remind our readers how strangely the white coif came to be hidden by the long wig. At first the Brothers of the Coif seem to have had several contrivances to prevent the coif being hidden by the wig. The pictures of several of the Serjeants at the end of the seventeenth century, e.g.

¹ See *ante*, p. 13.

² The beaus were so extravagant in the use of powder, that we are told they powdered their great coats on the back and shoulders.

³ See Hughson's 'History of London,' vol. iv. p. 557. The long wigs belonged only to the Judges and Serjeants and the *King's Counsellors*, i.e. the law officers of the Crown. The ordinary Counsellors only wore, as they do now, the short wig with the strings of horse-hair tied up at the end, which were in the last century called *bobbails* in imitation of the fashion sported by the ancient dandies of the time, who tied up their back hair in a string so long known as a *pigtail*.

⁴ See *ante*, p. 13.



Comyns¹ and Levinz² and Lutwyche³ well show the long wig of the time in flowing curls, and at the same time display the white coif of the old order to which they belonged, peeping out at the back of the head. Gradually the wig-makers got into the way of merely leaving a round space on the top of the wig for the display of the coif, and this patch was thus made to do service for the actual coif, by having fastened on to it, as already explained,⁴ some white lawn, with a diminutive cap over it in black ribbon.

The distinctive robes of the Serjeants-at-law have now come to be rarely displayed in Court. When acting judicially, or officially, or on state occasions, the Serjeants have followed the rules adopted by the Judges, and on the Bench, or on state occasions at St. Paul's, or at Guildhall or elsewhere, Serjeants-at-law, like the Judges, wear their red robes; but on most other occasions the Serjeants, like the *Queen's Counsel*, use only the black Court dress, and silk gown which came into fashion at the end of the seventeenth century, when all the Judges and Serjeants of the law, and all the members of the Legislature, assembled in Westminster Abbey in full mourning costume to attend the funeral of the departed Queen.⁵

Disuse of the distinctive robes of the Serjeants.

Introduction of black silk gowns.

¹ Chief Baron Comyns, so well known by the famous work '*Comyns' Digest*,' was called to the Coif in 1706, and practised as a Serjeant-at-law till 1726, when he was raised to the Bench.

² Sir Creswell Levinz, who in 1679 held the appointment of Attorney-General, was in 1681 called to the Coif, and after being a Judge for several years, returned to Westminster Hall and practised as a Serjeant-at-law.

³ Sir Edward Lutwyche who was created a Serjeant in 1683, made King's Serjeant 1684, a Common Pleas Judge in 1686, returned to the Bar after the abdication of James II., and practised as a Serjeant till 1704.

⁴ See *ante*, p. 13.

⁵ Queen Mary died 28th December, 1694, and the sombre William III., who owed to her the crown taken from her father's head, made the state

Mourning seems to have continued for a very long time after the Queen's death; and the black Court dress and silk gown worn by the Bench and Bar at her funeral continued the prevailing fashion of dress among them, being, as we are told by the writers already referred to, adopted by the Queen's Counsel and others who had not, like the Serjeants, a distinctive costume.

Forms and ceremonies of the Order of the Coif.

There had been from old times forms, ceremonies, and solemnities relating to the Order of the Coif at least as carefully observed as the rules which governed their costume. These formalities belonged not only to the call or creation of Serjeants, but to many ordinary occasions.

The solemnities observed at a call of Serjeants.

The solemnities formerly observed on a call to the Coif are much dwelt on by antiquarians, as well as by the most reliable legal writers; and we find the subject of the *creation of Serjeants-at-law* treated of with as much ceremony as the *creation* of Peers; and in statutes even of the sixteenth century, the Serjeant-at-law is classed with the great men of the realm in matters of importance,¹ and the forms and solemnities on the *call* or *creation* of Serjeants in those times are sufficiently recorded.²

Selection of fit

The old course prescribed as to the creation of new

mourning memorable. "Her obsequies were performed with great magnificence. The body was attended from Whitehall to Westminster Abbey by all the Judges and Serjeants-at-law, the Lord Mayor and Aldermen of the City of London, and both houses of Parliament."—Smollett's continuation of Hume's History of England, ch. iii., note L.

¹ See 1 Edw. VI. c. 7. Demise of the Crown.

² In Dugd. Orig. 113, the account is of "the maner and order in making of three Serjeants at the law" in 1504, from a MS. of the Under Treasurer of the Middle Temple, and at p. 114 of "the maner or order of making newe Serjeants create and made in Trin. 13 Hen. 8," and at p. 117 another account in 1 Edw. VI., taken from the Black Book of Lincoln's Inn, 178, 6; and in Dugd. Orig. 119, we have a more elaborate account of the Serjeants created and made in Mich. 19 & 20 Eliz., taken from the Ashmole collection.

Serjeants of the Coif was for the Judges to determine among themselves who were the most fit for the *call*, and for the Chief Justice of the Common Pleas to recommend a certain number of these (being Readers, Ancients, or Utter Barristers of the various Inns of Court) to the Lord Chancellor, in order that they might be duly summoned by the King's writ to take on themselves the state and degree of Serjeants.¹

persons to
be made
Serjeants.

Events already referred to show that this course was not a mere formality. It was adopted when there was urgent need *pro bono publico* that new Serjeants should be made in order to recruit the judicial staff,² and the system was found to answer when political partisanship ran high, and but for the ancient precaution the just course of judicial appointments was liable to be diverted.³

¹ "The Lord Chief Justice of the Common Pleas, by and with the advice and consent of all the Judges, is wont to pitch upon as often as he sees fitting seven or eight of the discreeter persons, such as have made the greatest proficiency in the general study of the laws, and whom they judge best qualified. The manner is to deliver in their names in writing to the Lord Chancellor of England, who in virtue of the King's writ shall forthwith command every one of the persons so pitched upon that he be before the King, at a day certain, to take upon him the state and degree of a Serjeant at law, under a great penalty in every one of the said writs specified and limited."—*Fort. De Leg. Laud. Ang.* c. 50, p. 113; and see *ante*, p. 32.

² See *ante*, p. 118. Case of Rolfe, J., etc.

³ In the Lansdowne MS. XXIX., No. 12, there is a confidential letter to the Lord Treasurer Burghley from Mr. Justice Wyndham in 1579–80, making suggestions of the persons "fit to be called Serjeants" in opposition to the list presented by Chief Justice Dyer to the Lord Chancellor Bromley, and specially excepting to two in that list—Marryott and Walmesley—on merely religious grounds, and suggesting in their place two others—Walker and Atkyns—"earnestly well affected in religion, and of good state of lyving;" but Dugdale's *Chronica Series* shows that Mr. Justice Wyndham's "secret advertisement," as he called his letter, was not regarded. In the remonstrance by the Commons to Charles I., in 1671, it was one of the grounds of complaint that the rank of Serjeant-at-law had been made

Ceremonies
at a call of
Serjeants.

As already stated, the ceremonies observed from the earliest time in a call of Serjeants have each of them a history of its own. The form of the writ of summons under the Great Seal requiring the elected and *qualified* apprentices of the law to take *the state and degree* of a Serjeant-at-law (*statum et gradum servientis ad legem*) is, according to Lord Coke and others, more than nine centuries old,¹ and gives to the Order of the Coif a stamp as authentic as that of the Barons called by writ to the High Court of Parliament; and the Serjeant's oath of office² is certainly as old as the writ. Up to this day the bare formalities as to the Serjeant's writ and oath are apparently the same as those in use so many centuries ago.

Serjeants
elect called
to the
Bench of
their Inns
de jure.

The Serjeants elect were, as we have seen, usually those who had been Readers of their Inns;³ but if not already so distinguished, and counting therefore among the *ancients* of their Inn, they were on receipt of the

the subject of sale. See 4 Rushworth's Collections, 438; Rapin, History of England, viii. 143. The rule that makes it necessary to obtain the special recommendation of the Judges as well as the approval of the Lord Chancellor before any one can be created a Serjeant-at-law, has been found to operate beneficially, H.M.'s writ having rarely been issued without such distinct vouchers of worthiness. In the rare instances of a call to the Coif without the ancient nomination of the Chief Justice of the Common Pleas, *the Order of the Coif did not gain much additional glory*.

¹ See the authorities cited, *ante*, p. 32.

² See *ante*, p. 118. The form of the oath is: "You shall swear well and truly to serve the Queen's people as one of the Serjeants-at-law, and you shall truly counsel them that you be retained with after your cunning; and you shall not defer or delay their causes willingly, for covetness of money, or other thing that may turn you to profit; and you shall give due attendance accordingly. So help you God." See *ante*, p. 35.

³ Mr. Justice Wyndham, in the letter to Lord Burghley already referred to, recommends for the coif Mr. Walker, of the Inner Temple, "a *doble* reader, and known to be a very good practyser," and Mr. Atkyns, of Lincoln's Inn, "a Reader of that house and auncient to any name in the bill for that house."

Serjeant's writ at once elected to the Bench, retaining their place of honour till after the return of the writs, when they went as Brothers of the Coif to one of the Serjeants' Inns.¹

Previous to the actual call or creation of Serjeants there were in former times stately ceremonies in the Inns of Court; the newly elected Serjeants assembling each in the Hall of his Inn, when learned addresses² were delivered, and a purse of gold *de regardo* or by way of retaining fee given to each of the new Serjeants, who were then *rung out* of the Society by the chapel bell, a usage kept up, at all events at Lincoln's Inn, to a very recent time.³

Ceremonies at the Inns before the call or creation of Serjeants.

¹ See *ante*, p. 174. The Serjeants' writs used formerly to be made returnable on a day certain in the Term after their date.

² "In primis in every howse of the fower Innes of Court upon Fridaye affore their creations, about 3 of the clock at after noone, the company assemblith, the new Serjeants of every house thene beyng in there Innes, in ther own chaumbers. And after that the company is so assembled in ther Halle, thence comyth downe to them the newe Serjaunts: and after that the newe Serjaunts be soo come downe to the company then all they stondynge togeder, the most auneynt of the company rehearseth the maner of lernynge and stody, gevyng lawde and preyce to theme that have well usid theme, shewing what wurshipp and profite comythe and growith by reasone of the same, in proof whereof those newe Serjaunts for their connyng discreitone and wysdome be called by the Kynges Highnes and his honorabill counselle to the great promocyone and dignytie of the office of a Serjaunt of the lawe: and thene he gevythe them in lawde and preyce for thier gode conversaceone and payne, and diligence, that they have takyne and used in ther stodye, presentynge to them the reward of the howse, besechyng them to be gode and kynde to the companye.

"And thene those newe Serjaunts geve unto the companye thanks and prey the company to be gode and kynde to theme and they shall always owe their favours and love to theme; ageyne gevyng a gret lawde unto the maners of the howse wher thorough they have atteyned to ther kounyng and promocyon."—Dugd. Orig. c. xlv., quoting an ancient MS.

³ The ceremony at Lincoln's Inn of a newly made Serjeant-at-law taking leave of the Society is given in Lane's 'Lincoln's Inn Guide,' 4th ed., p. 116, where will be found a full account of the public breakfast in the council chamber on the occasion of a Serjeant's call. The Serjeant elect attending in due state and informing the Benchers of the receipt of his writ, and

Putting on
the coif.

The ceremonial of putting on the coif and addressing the newly created Serjeants was formerly a solemn affair. The white coif of the order was placed on the head of the Serjeant elect with the same solemnity as the helmet was formerly placed on the head of the Knight, and the Lord Chancellor, Lord Keeper, or Lord Chief Justice¹ to whom the Royal power was entrusted, addressed the newly made Serjeants in a very elaborate address setting forth the antiquity, honour, and dignity, rights and duties of the Serjeants-at-law. Dugdale gives several of these addresses, amongst others a rather prolix address of Chief Justice Lyster on such an occasion in 1547;² and in Waterhouse's 'Commentary on Fortescue' there are extracts from the address of Lord Keeper Coventry to the ten Serjeants called in 1636.

expressing his regret on quitting the Society, and the Treasurer or senior Benchet addressing him in complimentary language and presenting him with a gold or silver net purse containing ten guineas, and the old books of the Society. Vol. 5, fol. 52 and 497, vol. 8, fol. 390-396, contain orders for collections from the fellows of the Society towards the charge of "sending forth the Serjeants."—Lane ut sup., p. 119. In the accounts of the Middle Temple furnished to the Commissioners on the Inns of Court there is an entry of a Serjeant's fee in 1850 (the time when Serjeant Miller took the coif.)

¹ "For the Serjeants at their creation; they come to the Lord Chief Justice of the King's Bench, the same day that they are to go to Westminster in the Hall of that Serjeants Inne, of which the Lord Chief Justice for the time being is: And the Serjeant comes in a black Robe, his antient clerk bringing after him a Scarlet Hood spread upon his arms and a Coif upon the Hood.

"Then, after the solemnity of a speech made by the Lord Chief Justice, and the Pleading repeated, the Lord Chief Justice puts the Coif on the Serjeant's Head, and tyes it under his chin: and then he takes the Hood and puts it upon his right side, and over his right shoulder. After this the Serjeant goes, and puts off his black Robe, and puts on a parti-coloured Robe of black and murrey, and his Hood of the same, so over his neck, with the Tabard hanging down behind; and so goes to Westminster, his men carrying before him the Scarlet Hood, spread on his arms, and the cornered Cap upon it."

² Dugd. Orig. 118.

The best of such addresses appears to be the following by Lord Commissioner Whitelock in Michaelmas Term 1648,¹ on the creation of the fifteen Serjeants then made. It is addressed to Serjeant St. John² and the rest, and was to the following effect :—

That it had pleased the parliament, in commanding these writs to issue forth, to manifest their constant resolutions to continue and maintain the old settled form of government and laws of the kingdom, to provide for the supply of the High Courts of Justice, with the usual number of judges, and to manifest their respects to our profession; to bestow a particular favour upon the members of it.

That he was sensible of his own weakness that he should be unwilling to see the solemnity of this general call diminished, and was the rather persuaded to do his duty for several respects.

1. For the honour of that authority, which commanded their attendance and his service upon the occasion.

2. For the honour of that court, which challenged a great share in that work, their writs issuing from thence, their appearance recorded, and their oath taken.

4. And lastly, out of his own affections to the degree, being himself the son of a serjeant, and having the honour to be one of the number in their call; and that both in his descent and fortune, he was a great debtor to the law.

Their being called *by writ* is a great argument of the antiquity of Serjeants. The Register hath many writs (as Lord Coke says in his preface to the 10 Rep.) that were in use before the Conquest, and in the most antient manuscript register is this writ, of the same form with those by which they were called.

Serjeants-at-law are often mentioned in the Year-books, and records as high as the beginning of Edw. I., and by Bracton, who wrote in Henry the Third's time.

It is a mistake to think that by Magna Charta "*Communia Placita non sequantur curiam nostram*" the Court of Common Pleas was erected; for the same great Charter is in Matthew Paris, in King John's time, with the words of *Communia Placita, &c.*, in it; and it is manifest, by undeniable authorities, out of antient manuscripts and rolls, etc., that cases were adjudged in Rich. I. and Hen. II.'s time,

¹ See Rushworth's collection, vol. ii., part 4: Whitl. Mem., p. 352.

² Who was soon after appointed Chief Justice of the Common Pleas.

“coram justitiariis in Banco residentibus;” and the names of those that were then judges of this Court are set down many years before Magna Charta was granted; which by Hovenden, Paris, and others, are said to be the laws of Edward the Confessor. And if Serjeants are as antient as these laws, and that Court, they are certainly as antient as any thing in our law; that no man can shew when that Court was first erected, which is also the opinion of Lord Coke (5 Rep., 9 Edw. IV.), Sir Roger Owen, Lambert, and others. In Hovenden and Paris, who lived in Rich. I. and Hen. III.’s time, and are authors of good credit, they recite the charge of the justices in eyre, given in Rich. I. and king John’s time. One of their articles is, to inquire of *the serjeants’ at law and attorneys’ fees*.

In the Book of Entries is a bill of debt against a serjeant at law in the Common Pleas; he prescribes, that serjeants could not be sued there by bill, but by writ out of the chancery; and this, being by prescription, shews that serjeants were before the time of Rich. I.

And the Mirror of Justices, which Coke holds to be written before the Conquest, saith, “a countor est *un serjeant sachant la ley de realm*, to pronounce and defend actions in judgment.”

From the antiquity of the degree, he observed upon the words of the writ.

1. *Quia, de advisamento concilii nostri, &c.*

These words are in the writs of creation of peers, and in the summons of them, both spiritual and temporal, and of the judges and king’s counsel, to the parliament, and in serjeant’s writs, but in no other; and for the greater honour, the council, by advice of which the serjeants are called, is the *great council of the kingdom*.

2. The next words in the writ are, *Ordinavimus Vos*, etc., in the plural number, in the second person, to express excellency in the person to whom it is referred.

Selden, in his Titles of Honour, fol. 121, sheweth the use of it in the Jewish nation, and in France, Spain, Germany, and other countries; and always is in dignity of the party to whom applied; and the style of the chancery is so only to the peers, the judges, the “*king’s counsel*” (i.e. the Privy Council), and to the serjeants.

3. The next words are, *ad statum*, etc., which sheweth dignity and honour given to them.

In many of our Year-books, especially in Edward the Third’s time, they were joined with knights, in assises, and in the statute 12 Rich. II. c. 10, the same privilege, which is given to the judges for absence from the sessions, is given also to the serjeants; and 34 Hen. VI. Brooke’s Abridg. *title Nosme* 5, saith, that *serviens ad legem est nosme*

de dignity, comme chivalier, and it is *character indebilis*; no accession of honour, or office, or remotion from them, takes away this dignity, but he remains a serjeant still.

Their robes and officers, their bounty in giving rings, their feasts (which, Fortescue saith, were *coronationis instar*, and continued antiently seven days, and kings and queens often present at them), and all the ceremonies and solemnities in their creation, do sufficiently express the state due unto them.

The next words in the writ are, *et Gradum*, etc. This is a degree of such eminency, that the professors of law in no other nation are honoured with the like, with such solemnities and state, and by mandate, under the public seal of the commonwealth.

Degrees are rewards of study and learning; and "by this degree they become chief advocates of the common law, an attribute given by Fortescue, who was a serjeant, and chief justice and lord chancellor.

"And all antiquity hath appropriated unto serjeants at law, the practice of that great and universal court, where all that concerns meum and tuum, the inheritances and property of all the people of England, are heard and determined."

He then goes on to observe:—

"This degree, ordaining you to be chief advocates, (the duty of whom pertains to you to be performed, and may not be declined by you,) I hold it not impertinent to mention something to you of the duties of an advocate; which are some of them to the courts and some to clients.

"To the courts of justice he owes reverence, they being the high tribunals of law, of which, Doctor and Student, and the statute of Marlebridge saith, '*Omnes, tam majores quàm minores, justitiam recipient;*' and therefore great respect and reverence is due to them from all persons, and more from advocates than from any others. .

"2. An advocate owes to the court a just and true information. The zeal of his client's cause, as it must not transport him to irreverence, so it must not mislead him to untruths in his information of the court. The statute of Westm. I. c. 29, and the *Mirroure of Justices*, agree in an excellent direction in this point.

"When a good cause is destroyed by misinformations or unlawful subtleties or deceits, let the instruments thereof take heed of the wo denounced by the Prophet against them that call good evil and evil good, that put darkness for light and light for darkness, their root shall be rottenness, and shall go up as dust."

“Remember that in your oath, for one verb [you shall serve] you have two adverbs [well and truly.]”

Serjeants’
feasts.

We must not omit to refer here to the subject of the *Serjeants’ feast*, which Sir John Fortescue tells us was in his days *instar coronationis*.¹ As observed in the ‘*Edinburgh Review*,’² the feasts in honour of the occasion of a call of Serjeants by no means formed an inconsiderable part of the ceremony in former times. “Looking to the way in which all important events were commemorated by our forefathers, from a coronation to the ushering in of a new Lord Mayor—festivities being deemed a sort of test of the importance of the event—the Serjeants’ feasts seem to have marked occasions standing high in public estimation. The ordinary business of the Courts at Westminster was suspended, the judges and other members of the old Order of the Coif, the benchers and apprentices of the Inns of Court, the ancients of the Inns of Chancery, with the high officers of state and even the Sovereign and members of the royal family, nobles and bishops, and the Lord Mayor and City officials, mustered in strong force to mark the occasion of a new call of members of the order, entrusted with the great work of administering the law.”

The feast at the *King’s Coronation*, and that of nearly equal antiquity kept in the City of London on Lord Mayor’s Day, were not the only famous public festivities known to our forefathers. The “Readers’ feasts”³ and the Masques and Revels in the Inns of Court also had their day, and in the time of Elizabeth and James went

¹ De Laud. Leg. Ang. c. 50.

² No. 300, October, 1877, “The Order of the Coif,” p. 144.

³ See *ante*, p. 175.

far even to eclipse the more ancient observances of the "Serjeants' feast;" and at one time it would seem that the solemnities at the creation of Peers, like those at the creation of Serjeants-at-law, included festivities in the orthodox form.¹

Serjeants' "feasts" seem to have been held only on the occasion of a call of new members to the order.² They were not mere jubilant banquets given by the newly-called Serjeants, but commemorative festivities in full state by all the Judges and Serjeants of the Coif, which continued to be held in great respect long after Fortescue's time. Neither of the halls of the Serjeants' Inns, or of the Inns of Court as they were even in the sixteenth century,³ afforded sufficient accommodation for such a purpose, and the Serjeants' feasts were usually held at Ely House⁴ or Lambeth Palace, or St. John's

Occasion of
the feasts.

Where
feast held.

¹ Stow gives an account of the call to the Peerage of Sir Arthur Plantagenet, Sir Maurice Berkeley, Sir William Sandys, and Sir Nicholas Vsux, and of the "solemnity of their creation being kept in April, 1523, at the King's Royal Palace at Bridewell."

² On the grand day the newly-called Serjeants had not completed all the solemnities of the call, and seem sometimes to have not appeared at the banquet, but to have dined with their wives in their own chambers. See Dngdale, Orig. 128.

³ See *ante*, p. 167.

⁴ The Bishop of Ely's Inn in Holborn, belonging to the See of Ely from 1297, was used as the Episcopal Palace up to 1500; and the Bishop's garden with its excellent strawberries is described by Hollinshed, and will be remembered by the account of Richard III. at the Council in the Tower asking the Bishop to send for some of them.

"My Lord of Ely, when I was in Holborn
I saw good strawberries in your garden there;
I do beseech you send for some of them."

Shakespeare, Richard III., act iv., sc. 4.

Serjeants' Inn in Chancery Lane was held for many ages under the Bishops of Ely, see *ante*, p. 131, and hence the Brothers of the Coif were always permitted to hold their *feast* at Ely House.

Priory¹ where the large and commodious rooms were all well suited for the occasion. We have in the old chronicles full accounts of many of these feasts. Some of them are certainly memorable.

Feast at
Ely House
in 1464.

The Serjeants' feast in 1464 was held at Ely House, where the preparations were on the usual grand scale, and the guests, the *élite* of the nobility, the church, the law, and the City, but the chief incident recorded is of an unsuccessful effort of the Lord Mayor to have at the feast precedence of the Lord High Treasurer of England (also a guest at Ely House), this Palace being within the City limits.²

Other
feasts
temp. Hen.
VII.

Another Serjeants' feast, also at Ely House, is recorded in 1495, where there was less confusion: the Serjeants being again honoured with the presence of King and Queen, and "all the chief Lords of England ;"³ another

¹ The Priory of St. John of Jerusalem (the order which succeeded to the possessions of the Knights Templars) was situated near Smithfield, and from its foundation in 1100 to its dissolution, temp. Hen. VIII., seems to have been a lordly abode—the scene of many a feast and many a commotion. See Stow's Survey of London—"Priory of St. Jehu," and see *ante*, p. 143.

² "In the yeare 1464, 4 Edw. 4th. in Michaelmas Terme, the Serjeants at Law held their Feast in this House; to the which amongst other Estates Mathew Philip Mayor of London, with the Aldermen, Shireeves, and Commens of Divers Crafts being invited, did repaire: but when the Mayer looked to keep the State in the Hall, so it had been used in all plectes within the City and Liberties (out of the King's presence) the Lord Grey of Ruthin, then Lorde Treasurer of England, unwitting the Serjeants and against their Wills (as the saide) was first placed. Whereupon the Mayor, Aldermen, and Commens departed home; and the Mayer made the Aldermen to dine with him. Howbeit he and all the Citizens were displeased that he was so dealt with; and the newe Serjeants and others were right sorry therefore; and had rather than much good (as they said) it had not so happened.—2 Stow's 'Survey of Londen,' title Ely Heuse.

³ Hollinshed, Chron. p. 779, A.D. 1495. "The King to honour the feast, was present with his Queen at the dinner; being a Prince that was ever ready to grace and countenance the Profession of the law; having a little of that "that as he governed his subjects by his laws, so he governed his laws by his lawyers."—Bacon's 'History of Henry VII.' p. 82.

at Lambeth Palace in 1504, where Henry VII. and the nobility again attended, and also the Mayor and Sheriffs of London in full state¹ and in good condition.

Henry VIII., like his father, honoured the *Serjeants' feasts* with his presence, and they appear to have been kept up in due state. On one of these occasions, the creation of eleven Serjeants, in 1531, we find the King and Queen Catharine of Arragon were both present. The proceedings for dissolving the marriage between King and Queen Catharine were going on, and His Majesty was already privately married to the fair Anne Boleyn, one of the *maids of honour*. Queen Catharine came in state to the Feast, but we are told that King Henry and Queen Catharine *occupied separate apartments*, though it is not stated in which of them the fair Anne Boleyn took her place.²

The Ser-
jeants'
feasts
temp. Hen.
VIII.

¹ "In the 19th of Henry 7th, 19th November, the Serjeant's Feast was holden within the Palace of the Archbishop of Canterbury at Lambeth, where dined the King and all his Nobles; and upon the same day, Thomas Granger, newly chosen Shireeve of London, was presented before the Barons of the King's Exchequer, there to take his oath; and after went with the Mayor unto the same Feast, which saved him money in his purse: for if that day the Feast had not been kept, he must have feasted the Mayor, Aldermen, and other Worshipful of the City. This Feast was kept at the charge of ten learned men; Robert Brudnell, William Grevill, Thomas Marrow, George Edgore, John More, John Cutler, Thomas Elliot, Lewis Pollard, Guy Palmer, and William Fairfax."—Dug. Orig. p. 127.

² On Monday, 13th November, "which was their principal day, King Henry and Queen Catharine dined there, but in *two chambers*, and the foreign ambassadors in a third chamber." See Stow's 'Survey of London,' Ely House, p. 426, and Hughson's 'London,' 110.

Stow, in describing the feast, says, "It were tedious to set down the preparations of Fish, Flesh, and other victualls spent in this Feast, it would seem almost incredible; and (as to me it seemeth) wanted *little of a Feast a Coronation*. Nevertheless a little I will touch, for declaration of the change of prices.

There were brought to the slaughter house twenty-

four great beefes at :	. . . . .	01l. 06s. 08d. the piece.
From the Shambles on Carcass of an Ox		01 04 00

Decline of
the Ser-
jeants'
feasts.

The
lawyers'
masques
and revels
in the Inns
of Court.

The Serjeants' feasts gradually lost their importance. In the time of Edward VI., Mary, Elizabeth, and James, we read of such celebrations (comparatively small gatherings), but they were in the Hall of Serjeants' Inn, or of the Inns of Court, to which the Serjeants elect belonged. Kings and Queens ceased to attend the banquet on *Grand day*; the Royal patronage of lawyers' entertainments being diverted in favour of the masques and revels at the Inns of Court, which had become the order of the day,¹ and were more attractive to courtiers than the grave banquets of the Judges and Serjeants. These entertainments in the Inns of Court had begun early in the sixteenth century, and the masques and revels of

One hundred fat Muttons at	00 02 10 a piece.
Fifty-one great Veales at	00 04 08 a piece.
Thirty-four Porkes	00 03 03 a piece.
Ninety-one Pigs	00 00 06 a piece.
Capon of Greece of one Poulter (for they had 3) ten dozen at	00 01 08 the piece.
Capons of Kent nine doz. and six at	00 01 00 a piece.
Cocks of grose seven doz. and nine	00 00 08 a piece.
Cocks course, xiii. doz. at 8d. and three pence a piece.	
Pullets, the best	00 00 02
Other Pullets	00 00 02
Pidgeons, 37 dozens at	00 00 10 the dozen.
Swans, xiii. dozen.	
Larkes, 340 dozen at 5d. the dozen.	

Edward Nevill was Sencscall or Steward, Thomas Ratcliffe, Controller, Thomas Wilden, Clerk of the Kitchen."—Dug. Orig. p. 128.

¹ In Hall's Chronicle there is a record of one of these as early as 1525, when we are told of a goodly disguising played at Gray's Inn, compiled by John Roe, Serjeant-at-law; and the play so set forth with rich and costly apparel and with strange devices of masks and morrishes, that it was highly favoured by all men except by Cardinal Wolsey who imagined that the play was devised of him. In a great fury he sent for Serjeant Roe, and took from him his coif and sent him to the Fleet, and afterwards he sent for the young gentlemen that played in the play and highly rebuked and threatened them and sent one of them to the Fleet; but by means of friends Master Roe and he were delivered at last. This play sorely displeased the Cardinal, and yet it was never meant for him, wherefore many

the gentlemen of the Temple and Gray's Inn served at all events to afford gratification as well as amusement to the Court of Queen Elizabeth and James I., the apprentices of these inns vying with each other in their endeavours to carry off the palm, and keeping up an association which was at one time stronger than that with both of the other two Inns.¹ We hear little afterwards of the Serjeants' feasts. James I., unlike the ancestor through whom he came to the throne, was not "a Prince ever ready to grace and countenance the Profession of the law,"² and on the contrary appears to have been especially pleased with the play of 'Ignoramus,' where Judges, Serjeants, and Counsellors were all made the subject of buffoonery by the undergraduates at Cambridge.³ After the sixteenth

The law-
yers' feasts
discon-
tinued.

wise men grudged to see him take it so to heart; and even the Cardinal said that the King was highly displeased with it and spoke nothing of himself, and Fox, in his 'Arts and Monuments,' says that "Simon Fish," a gentleman of Gray's Inn newly settled in London, undertook to play the part of the play "which touched the said Cardinal," when none other durst attempt it to the Cardinal's great displeasure insomuch as he being pursued by the said Cardinal, the same night that this *tragedy* was played was compelled of force to avoid his own house and so fled over sea to Tindal."—Gray's Inn, 64.

¹ The famous entertainments in the Middle Temple Hall are sufficiently recorded; but there had long been a special alliance for this purpose between the Inner Temple and Gray's Inn. This association is shown in Beaumont and Fletcher's 'Masques of the Inner Temple and Gray's Inn,' and 'Gray's Inn and the Inner Temple,' performed at Whitehall in 1612; and the strict alliance which ever was between the two houses is also mentioned in an old pamphlet entitled 'Gesta Grayorum,' in which Bacon is said to have assisted. See Spedding's 'Life and Letters of Bacon,' vol. i. p. 342. The performances of the gentlemen of Gray's Inn in the masques in 1588 is said to have been so successful that they were called on to repeat the entertainment before Queen Elizabeth at Greenwich, and in commemoration of this exploit the toast still given on Grand Day in Gray's Inn is 'the glorious, pious, and immortal memory of good Queen Bess.'—Notes on Gray's Inn, by W. R. Douthwaite, Librarian, 1876.

² Bac. Hist. of Hen. VII. p. 82.

³ See *supra*.

century we find newly-created Serjeants were welcomed in a less stately fashion in the Hall of their Inn or in Serjeants' Inn, Chancery Lane. Two only of these modern *Serjeants' feasts* are described—the one in 1674, when Francis North was called to the Coif and made Chief Justice of the Common Pleas,¹ and the other in 1736, when fourteen new Serjeants were created,² and the feast was held in Middle Temple Hall.

The last of
the "Ser-
jeants'
feasts."

At length, soon after the accession of George III., when the two Societies of Judges and Serjeants had become united,³ it was unanimously resolved by the whole order of the Coif that the *Serjeants' feasts* were unsuitable to the altered state of things, and should henceforth be discontinued. The Judges had by successive reforms been made wholly independent of the Crown.⁴ The other members of the Coif had come to

¹ North's call to the Coif is recorded in the *London Gazette*, 23rd January, 1674; and in Serjeant Wynne's account of it, showing how he entertained the Lord Keeper, nobility, and all the Judges at dinner in Serjeants' Inn, Chancery Lane (Tracts, p. 302).

² This call is minutely described by Serjeant Wynne, who was one of the fourteen men called. See Wynne's Tracts, 325. The feast was in the Middle Temple Hall, and we find the Lord Chancellor and Lord President, and nobility present with the Judges and Serjeants and officials of the Courts, etc. See also *post*, p. 251. The City, as usual on these occasions, lent their fine gilt plate.

³ See *ante*, p. 131.

⁴ The accession of George III. is continually referred to as the period when the dignity and independence of the Judges of the Superior Courts was legally secured: and the orthodox Blackstone so lays it down (1 Bl. Com. 267); but the change in the law then made was really to carry out the more important reform effected in the time of William III. The ancient position of the Judges was very precarious. They were subject to removal at any moment if the King thought proper to dismiss them. At the end of the reign of William III. this arbitrary power of the Crown was restrained, and the Judges' commission was described as *lasting quamdiu se bene gesserit*, 12 & 13 W. 3, c. 2, s. 3, but on the accession of Queen Anne the next year, it was found that every one of the Judges' patents required renewal, being voidable by the new Queen: and two of

hold with the King's Counsel but a divided empire. Westminster Hall and the Serjeants' feasts, which in days long gone by had been deemed worthy of a place in the chronicles of England, were wisely considered unsuitable to the altered state both of the Bench and the Bar.¹

It was an old usage for the Judges and Serjeants of the Coif to attend in state at the banquet at Guildhall on Lord Mayor's Day, and at the Sheriff's dinner, in June, as well as at the Readers' feasts in the Inns of Court. As a rule, the interchange of civility and hospitality between the members of the Coif and the City magnates has been well maintained. To use the words of the 'Edinburgh Review'² in 1877, "The authorities at Guildhall, no doubt in accordance with the old system of hospitality, have from time immemorial included among their most honoured guests, on Lord Mayor's Day, and at other state feasts, the Judges and Serjeants-at-law, who attend in full dress. A certain number of the Judges and Serjeants still go in state to the Guildhall banquet, and are, or

Attend-
ance of
Judges and
Serjeants
of the Coif
at other
feasts.

the Judges, Mr. Justice Turton and Mr. Baron Hatsell, with five of the King's Serjeants' and three of the King's Counsel, were actually superseded. See Lord Raym. Rep. 769; Thos. Jones' Rep. 43. And on the two next occasions of the demise of the Crown the evil of the system appears to have been felt, every judicial appointment then legally expiring, and its renewal left to depend merely on Court favour. The Act of 1760 (1 Geo. 3, c. 23), therefore, which provided that all such commissions should continue notwithstanding the demise of the Crown, was not only in form but in substance very important, and George III. seems to have personally taken an interest in the matter, as before it became law His Majesty gave orders for renewing all the patents of the Judges, King's Serjeants, and King's Counsel, without any alteration. See Wynne's 'Serjeant-at-Law,' p. 348.

¹ The last Serjeants' feast was held in Lincoln's Inn Hall on 6th February, 1759, when Mr. Henry Gould, afterwards Mr. Baron Gould, was admitted to the order.

² 'Edinburgh Review,' No. 300, p. 446.

rather were till the Judicature Act came into operation, escorted by the Corporation officers."

Dugdale¹ speaks of feast-days at the Inns of Court, when the Judges and Serjeants were entertained at the Halls of the Inns to which they respectively belonged.

Judges and
Serjeants
at St.
Paul's.

From time immemorial the Judges and Serjeants of the Coif have been very distinctly identified with St. Paul's Cathedral.² The *parvis* there, we must remember, was the ancient *Forum Anglicanum*, where the Serjeants of the Coif had each their allotted pillar:³ and the religious observances of the Judges and Serjeants seem, (as befitted them,) to have been always sufficiently methodical. When Fortescue's treatise '*De laudibus legum Angliæ*' was written every Judge and Serjeant had, in his turn at all events, *stood by his pillar at St. Paul's*, allotted to him at the time of his admission to the order; and the ancient ceremony of allotting the Serjeants' pillars⁴ was repeated at every call of Serjeants.

Allotment
of Ser-
jeants'
Pillars.

Devotions
of the
Judges and
Serjeants
at St.
Paul's.

The religious rites and ceremonies observed by the learned Judges and Serjeants of the Coif in connection with their visits to St. Paul's seem at this day hardly credible—usages hallowed by the religious observances of ages required visits, offerings, and devotions at the shrine or monument of saints and martyrs specially associated with the City, the church, or the law.

St. Thomas
of Acons.

To the time of the Reformation the most marked of

¹ Orig. Jur. p. 205. With reference to the Guildhall banquet as to the dinners in the City, there were settled rules as to the dress of the Judges and Serjeants: see *ante*, p. 226; and Dugdale tells us that "When the Judges go to any Readers' feast, they go upon the Sunday or Holy Day in Scarlet: upon other days in Violet, with Scarlet Casting-Hoods, and the Serjeants go in Violet, with Scarlet Hoods."—Dugd. Orig. p. 102.

² See *ante*, pp. 2, 3, 4.

³ See *ante*, pp. 3, 101.

⁴ See *ante*, p. 91, and *post*, p. 254.

these observances was in memory of Thomas à Becket, gradually translated into a *saint*, at whose shrine thousands periodically appeared : and high and low poured in their offerings for the benefit of the Church, and in devout acknowledgment of the miracles vouched for by holy friars, and reported by them to have been worked by the departed spirit of *St. Thomas of Canterbury*, or as the citizens of London preferred calling him, *St. Thomas of Acons*.¹

The Judges and Serjeants of the Coif were wont to go to the chapel of *St. Thomas of Acons* to make their offerings before meeting at St. Paul's and going through other formalities at the Rode of the North door, and the shrine of *St. Erkenwald*.²

Procession
to *St.
Thomas'
Chapel*.

When Henry VIII. fell out with the Pope and the

Abolition
of super-

¹ See *ante*, p. 91. The *alias* given to *St. Thomas of Canterbury* of *St. Thomas of Acre* was in memory of the miracle said to have been performed by his Spirit at the siege of Acre. The foundation by à Becket's sister temp. Henry II. (on the site of the present Mercers' Chapel), in Cheapside, was, according to Stow, called the Hospital of St. Thomas of Acons or St. Thomas of Acons. See Stow's London, 'Cheap Ward,' Hospital of St. Thomas of Acons.

² "And when the said new Serjeants have dined, then they goo in a sober maner with their said offycers and servaunts into London oone the Est side of Chepesyde, one to *Seynt Thomas of Acres* and there they offer, and then come down on the west syde of Chepesyde to *Powles*, and ther offer at the Rode of the North door, at *St. Erkenwald's* shrine, and then goo down into the body of the Chirche, and ther feast, they be appoynted to their pyllyrs by the Styward and Countroller of the feste which brought them thider with the oder officers.

"And after that deene, they goo hoome ageyne to the place of the feaste," etc.—Dugd. Orig. c. 44, p. 117.

The similarity between this procession to St. Paul's of these Judges and Serjeants and that of the Mayor and Corporation of London is very remarkable. The *City Liber Albus* describes, among other usages and observances of the Mayor on certain days, a procession after dinner to the Church of St. Thomas of Acons, to meet the Aldermen and those of the *Mayor's livery*, with the substantial men of the mysteries, duly arrayed, and then going in state to St. Paul's to hear vespers and complines. See 'Lib. Albus,' p. 1, ch. viii. fol. 66.

stitious
ceremonies
at Refor-
mation.

priesthood and their cumbersome hagiology, the adoration of *à Becket* as *St. Thomas of Canterbury* or *Acres* or *Acars* or *Acons*, had become a gross abuse, a source of much gain to the monks and friars, a cause of great scandal to the law and the Church :¹ and Henry VIII. seems to have taken a special interest in degrading the saint who had caused so much trouble in days gone by. The Reformation took down the idol from its pedestal, and the Judges and Serjeants thenceforth altogether ignored it. The visits to St. Paul's were however continued; the ancient practice of allotting the Serjeants pillars remained till old St. Paul's was burnt down ;² and the religious observances of the Order of the Coif, sobered down by the utilitarian machinery of the *Reformation* of the Church and of the Judicature, continue to our day, in the attendance of "H.M.'s Judges at St. Paul's:" whether or not they belong to the old order with whom the association originated.

Among the ceremonies and observances on the creation of Serjeants-at-law, one of the most ancient is that of the presentation of gold rings to the Sovereign, the Lord Chancellor, and others *fidei symbolo*.³ Sir John Fortescue

¹ The absurd extravagances of the offerings of the devotees, and the miracles worked at the shrine of St. Thomas are well described by Hume, *History of England*, vol. 1, ch. viii. p. 147. In Chaucer's immortal '*Canterbury Tales*,' written 500 years ago, we have the pilgrimage to Canterbury so described as to charm the readers of this day.

² Dugdale, writing in 1666, a few months before the great fire, when old St. Paul's and the ancient pillars were all destroyed, refers to the ancient custom of the Serjeants at the Parvis, and goes on to say that "after the Serjeants' feast ended they do still go to St. Paul's in their habits, and there choose their pillar, whereat to hear their clients cause (if any come) in memory of that old custom."—Dugd. Org. Jur. 142.

³ Sir Henry Spelman says, "Donatur Serviens ad legem annulo aureo seu alios donat fidei symbolo, nam sic in coronatione Rex annulo donatur quasi jam disponsus Reipublicæ."—Spelman's Gloss. tit. Serviens ad legem; Dugd. Org. 120.

particularly speaks of these fidelity rings on the call of Serjeants—the custom in his time being not only to give rings to the King, but “so that the Prince, the Duke and Archbishop, and every Earl and Bishop, and all the Judges, Abbots, and Knights present, and all the officers serving in the King’s Courts, especially the Common Pleas, received a ring suitable to his degree, besides other rings presented to friends.”¹

The usage of giving a ring *fidei symbolo* is certainly Others.
very old. It has been always observed at the coronation of our Queens and Kings as at the marriage or betrothal² of ordinary folk; and at the installation of Knights of the Garter the solemnity has always been accompanied by the presentation of rings.³

The ancient custom of the Serjeants presenting rings is one of the few that have been kept up to our time. Serjeants’ rings are specially mentioned in the regulations for the general calls to the Coif, temp. Henry VIII. and Elizabeth, and not forgotten even during the Commonwealth.⁴

Mottoes on the Serjeants’ rings, or posies as they were called, though spoken of by Dugdale as then usual, do not appear to have been adopted till the middle of the reign of Elizabeth.⁵ Ring
Mottoes
or posies.

The practice at one time was for the same motto to be

¹ Fort. De Laud. Leg. Ang. c. 80.

² See on this an ingenious work published in 1877, by William James F.S.A., entitled ‘Ring Lore.’

³ See on this Ashmole’s ‘History of the Most Noble Order of the Garter.’

⁴ On the occasion of the call to the Coif in 1648, a debate arose in the house whether the new Serjeants should send a ring to the King: *but put off*.—See Whitl. Mem. 350.

⁵ It is not mentioned in Chief Justice Wray’s remarks about the rings of the Serjeants called in 1578, 19 & 20 Eliz., but their rings certainly had a motto, *Rex Regis præsidium*, which Serjeant Wynne says was the first motto he had met with.

adopted by all the Serjeants included in the call. At first, as a learned brother of the order observes, these mottoes were rather barbarous in their style, e.g. *Lex, Rex, Grex*, but afterwards kept pace with the taste of the age.¹ The law-worshipping Coke, on taking the coif in 1606, took for his motto "*Lex est tutissima cassis*." The motto on the Serjeants' rings at the call just after the Restoration was "*adest Carolus*," after the "*præsens divus Augustus*" of Horace. The motto of the time-serving Jeffreys was "*a Deo Rex, a Rege lex*." The Serjeants who were made in 1842, after Sir John Campbell's ineffectual attempt to destroy the order, was "*Honor nomenque manebunt*."²

Giving of
liveries,
etc.

One of the ancient ceremonies observed at the creation of Serjeants-at-law was the giving liveries to retainers and friends. The usage is expressly referred to in the statutes relating to liveries,³ and was only discontinued in 1759.

Judges and
Serjeants'
going to
the Courts
on horse-
back.

The Judges and Serjeants in old times appear always to have gone to the Courts on horseback with a retinue of men in *livery*. They are always described as *riding* the circuit, and the addresses to the newly-created Serjeants give them advice as to the number of horses they should keep and how they should dress when riding circuit.⁴

The old
processions
to West-
minster
Hall.

At the opening of the Courts at Westminster Hall the Judges and Serjeants had been long accustomed to attend in regular procession. The Judges up to the middle of the sixteenth century seem, on these occasions, usually to

¹ Serjeant Wynne's Tracts, p. 362. Sometimes one motto was adopted by all the Serjeants included in the same call—at other times each of them adopted a distinct motto.

² This call included Serjeants Manning, Channell, Shee and Wrangham, all of whom were well known as Queen's Serjeants, two in after years as excellent Judges.

³ See *ante*, p. 222.

⁴ See *ante*, p. 106, and address to Lord Keeper. Dyer, *id. ib.*, n. 1.

have gone on *mules*, like the old bishops and abbots. Serjeant Whiddon, who was made a Judge of the Common Pleas in 1553, has the credit of getting this ancient observance changed, the Judges going to Westminster on horseback;¹ and the cavalcade, we are told, was sometimes very imposing, the Lord Chancellor or Lord Keeper and great officers of State, with the Judges and leaders of the Bar and many of the nobility going on horseback in full state. Such was certainly the case when Bacon got the Great Seal in 1617.² Pepys mentions his meeting the Lord Chancellor and Judges riding on horseback to Westminster Hall on the first day of Michaelmas Term, 1660.³

The gay minister of Charles II., Anthony Ashley Cooper, Earl of Shaftesbury,⁴ on obtaining the Great

Result of
revival of
the old

¹ "It is reported that John Whiddon, a Justice of the Court in 1 Mariæ, was the first of the Judges who rode to Westminster Hall on horse or gelding, for before that time they rode on mules."—Dug. Orig. 38. The Mayor's procession to Westminster up to 1454 was always on horseback.

² "As to the formal proceeding of this great officer unto Westminster Hall after he is advanced to that dignity, I shall give this only instance of Sir Francis Bacon Knight, who (being the King's Attorney General) having received the Great Seal upon the seventh March, 14 Jac. Regis, upon the first day of Easter Term then next ensuing, went thus—1st the clerks and inferior officers of the Chancery; secondly, young students of the law; thirdly, the gentlemen of his own family; fourthly, the Serjeant at Arms and the bearer of the Seal (all on foot); then the Lord Keeper himself on horseback in a gown of purple satin betwixt the Lord Treasurer and the Lord Privy Seal, divers Earls Barons and Privy Counsellors, as also the Judges and many gentlemen of note following after."—Ex. Annal. Regis Jacob. per W. Camden MS.; Dug. Orig. c. 16.

³ "In my way thither I met the Lord Chancellor with the Judges riding on horseback, it being the first day of the term."—Pepys' Diary, vol. i. p. 80.

⁴ The first Earl of Shaftesbury was on the woolsack from 17th Nov. 1672 to 9th Nov. 1673, succeeding Sir Orlando Bridgeman, without ever having practised the law or gained other experience than that derived from active service during the Civil War and attendance at Court since the Restoration. He seems to have had little respect for the judicial office, sitting on the bench, as we are told, in an ash-coloured gown, silver laced and full-bottomed pantaloons displayed without black garb of any kind,

procession
on horse-
back.

Seal, sought during his short tenure of office as Lord Chancellor to make the judicial cavalcade on the first day of term as showy as in the time of Bacon.

Roger North tells us, "His Lordship (Lord Shaftesbury) had an early fancy, or rather freak, the first day of the term (when all the officers of the law, King's Counsel and Judges, used to wait upon the Great Seal to Westminster Hall) to make this procession on horseback, as in old time the way was when coaches were not so rife. And accordingly the Judges were spoken to to get horses, as they and all the rest did by borrowing or hiring, and so equipped themselves with black foot-cloaths in the best manner they could; and diverse of the nobility, as usual in compliment and honour to a new Lord Chancellor, attended also in their equipments. Upon notice in town of this cavalcade, all the show company took their places at windows and balconies, with the foot guard in the streets, to partake of the fine sight, and being once settled for the march, it moved, as the design was, statelily along. But when they came to straights and interruptions, for want of gravity in the beasts, or too much in the riders, there happened some curvetting which made no little disorder.

"Judge Twisden, to his great affright, and the consternations of his grave brethren, was laid along in the dirt, but all at length arrived safe, without loss of life or limb in the service. This accident was enough to divert the like frolic for the future, and the very next term after they fell to their coaches as before."

In a paper undated of the time of Charles II., and

setting all rules of Westminster Hall at defiance. He will be remembered as the Achitophel of Dryden (the Lord Ashley, who, with Clifford, Buckingham, Arlington, and Lauderdale, constituted the famous CABAL).

found among the muniments of a noble family numbering a Lord Chancellor in the ancestral roll, and therefore supposed to be authentic, there is a document entitled "How the Lord Chancellor goes to Westminster on the First Day of Term."¹

¹ "The usual manner of the Lord High Chancellor, his going to Westminster the first day of every terme, whither on horse or in coach, and how attended." His Lordship the first day of every terme, about eight of the clock in the morning is attended att his owne house by the Lorde Cheife Justice, the Master of the Rolles, the Chiefe Justice of the Common Please, and the Cheife Baron of the Exchequer, together with all the Judges, the Attorney, and Solicitor Generall, and the rest of the Kinge and Queen's Councill, and the Serjeants at Law with all the Officers belonging to the High Court of Chancerye, where they are treated with biscuit wafers, round cakes, and macaroons, and with brewed and burnt wyne, served after this manner—Thirdly, the brewed wyne in a faire, great cupp, conteyninge a gallon, brought in by the Usher of the great Chamber, and presented to the Lord Chancellor, who drinckes to the Mr. of the Rolles, and Lord Chiefe Justice of the Common Please, and soe goes about to the Judges and the rest of the Officers in that roome.

"Which ceremony ended, his Lordship sets forward for Westminster Hall in manne followinge:—If his Lordship goes in a coach, then the Master of the Rolles sits in the coach by him, and the 2 Lord Cheife Justices sits at the other end of the coach. The Serjeant at Armes, sits alone in one boot, and the seale bearer alone, the other boot. The Lord Cheife Baron and the rest of the Judges, King's Councill and *Serjeants at Lawe*, placed before the Barr of that Court, and Officers of the Chancery, follows in their coaches, every one in their order and degree, to Westminster Hall doors, where his Lordship takes leave of the Cheif Justice and the rest, and soe passing by the Court of Common Please, there finds the *Serjeants at Lawe* placed before the Barr of that Court, presenting themselves to his Lordship. Accordinge to their seniority, his Lordship shaking them by the hand as he passes along; which ceremony ended, his Lordship goes upp to the Chancery Court. But, if his Lordship rides on horseback, four footmen goes beside his Lordship, two on one side of his Lordship's horse, and two on the other; he rides foremost alone, with a small wand in his hand, and his gentlemen of his horse walkes by his stirrups. Next his Lordship rides the Cheif Justice, and the Master of the Rolles, etc., etc. But before his Lordship there first walkes the Serjeant at Armes and the Seale bearer, and first Gent. Usher; before them, his Lordship's Secretary and all the rest of his retinue in order, all baro; next before them walkes the officers of the Chancerye in their orders and degree, all covered. Before all goe the Tipstaves of the Court and the Constables, who cleare the way for his Lordship's passage through the streets to

Riding the
circuit.

The Judges and Serjeants in the Circuits were obliged in *old times to travel on horseback*, and were said therefore to ride the Circuit, and we find continual reference to their escort to the assize town by the Sheriff of the County with his retainers and javelin men, etc.; and in the formal addresses in Westminster Hall to the newly-made Serjeants in the sixteenth century we find directions given as to the number of horses they were to keep, and how they were to ride the Circuit.¹

Modern
fashion of
Judges on
horseback.

More recently, when the Judges have *ridden the Circuit* or gone to the Law Courts on horseback, they have done so for their own pleasure, and their risks and mishaps have been of their own courting. Though the Bar could probably supply, if called upon, a sufficient number of goodly cavaliers, yet it must often happen that its successful members become equestrians at an advanced period of life, and there are many good old Westminster Hall stories told of the adventures of members of the Bench and the Bar, and their feats on horseback; about the *Charger of 'General' Watson*,² and how it was rudely

Various
incidents
and

Westminster Hall door, where his Lordship alighting, delivers his wand to his Gentlemen of the Horse, and takes leave of the Lords Cheife Justice as before, and receives the *Serjeants at Lawe* at the Common Please Barr, and so goes to the Chancery."

¹ Chief Justice Dyer, after various other suggestions to the seven Serjeants called in March, 1577, tells them "to ride with six horses and their sumpter in long journeys, to wear their habit most commonly in all places at good assemblies, and to ride in a short gowne."—Dug. Orig. 120.

² Baron Watson, when at the Bar, used to ride a horse of such antiquity, that he spoke of it as having been his charger at Waterloo, when he was a cornet of dragoons. Arguing in the Court of Common Pleas on the provisions of the Statute of Frauds as to contracts of the value of £10, he is said to have very prosily reiterated the words, "Suppose, my Lords, that I contract to sell my horse," until he was, to the extreme amusement of the Court and the Bar, interrupted by the Chief Justice Jervis with the remark: "But you must make it out to be of the value of ten pounds."

depreciated by Chief Justice Jervis, and about "Byles on Bills,"¹ with the droll misgivings of Chief Justice Tindal as to taking the Attorney-General's advice respecting the safety of the horse he was in the habit of riding.² Such disasters have been less frequent than might have been expected among men whose riding lessons were first taken when they had at all events attained middle age. Sir Cresswell Cresswell's death was occasioned by a fall from his horse in Hyde Park, when that lamented Judge was seventy years of age. Lord Campbell, who was four years older, attained the Chief Justiceship,³ and, returning from Guildhall, was thrown from his horse, and was reported to have been killed,

anecdotes
relating
thereto.

¹ Sir John Byles, so long known in Westminster Hall as Serjeant and Judge, and before that time as the author of the famous work on the law of Bills of Exchange, was long in the habit of counteracting the effects of his sedentary pursuits by horse exercise.

A horse which, for many years, carried him to Westminster Hall and the Temple and on Circuit, got the name of 'Byles,' and had become so used to his rider's methodical habits that he would stop opposite his Chambers in the Temple, and remain unattended until the Serjeant was ready to go to Westminster. The well-known figure of both master and horse got the name of 'Byles on Bills,' and punctually at half-past ten their arrival opposite the private entrance to the Common Pleas might be noted. When on one occasion the learned Serjeant was detained, and the business of the Court of Common Pleas was delayed in consequence, the Judges not being able to proceed with the business, a question was asked what the Judges were waiting for, whether for Coke upon Littleton, or the Term Reports? A sly old barrister suggested that it was neither for one nor the other, but for Byles on Bills.

² The late Chief Justice Tindal used to tell a sly story of Campbell, when Attorney-General, meeting him on horseback on the road to Westminster, and praising the Chief Justice's horse, was informed by him that the groom had reported unfavourably of the animal—that he had a habit of stumbling. Campbell, however, continued to praise the beast, intimating that it would be difficult for the Chief Justice to be suited better. Sir N. Tindal in telling the story afterwards slyly added, that he thought it best, after such advice coming from the Attorney-General, to at once get rid of his horse.

³ See 'Life of Lord Campbell,' by his daughter, the Hon. Mrs. Hardcastle, vol. ii. p. 308.

but, as he himself reports, was at half-past nine next morning again upon the Bench at Guildhall, *to the great surprise and dismay of Mr. Attorney-General, who for a space had considered himself Chief Justice.*

CHAPTER VIII.

CONCLUDING REMARKS.

IN the foregoing pages we have seen the origin and history of the Order of the Coif, and how the institution flourished here for so many centuries, forming, as it were, a part of our common law. In our retrospect we have witnessed the old order in the earlier days referred to by Chaucer, when the *Parvis* of Old St. Paul's served as the English Forum,¹ and we have looked back on the ancient *Aula Regia*, with the Justices of the one Bench and the other² sitting there, and the old *Conteurs* or *Narratores Banci* standing by, and we have seen these Judges and Serjeants of the Coif constituting the only recognised Bench and Bar in this country. We have also gone back to the actual history of Westminster Hall from the time of its first occupation by the lawyers to their recent removal to the new Law Courts under a newly constituted system of judicature.

Retrospect.

The Order of the Coif, as we have seen, formed from the earliest period of our legal records, a distinct and recognised body, with a permanent position in reference to the law. From their body were chosen the regular

Legitimate position of the order.

¹ See *ante*, p. 3. The *Parvis* of St. Paul's, for a century before the fire of London, was the designation of the middle aisle, or *Paul's Walk*, where the wits and gallants and newsmongers met, and the Serjeants were to be found ready to receive their clients.

² See *ante*, p. 92.

Judges and higher law officers of the Crown ; not only the Attorney-General, but the *Servientes Regis ad legem*, and the Chief and other Justices of the various Benches, appointed from time to time, and removable from Court to Court, and discharged as the Crown might direct, retaining always their position and station as *Serjeants-at-law*.

Legitimate
status et
gradus of
Serjeants-
at-law.

We have already said sufficient as to the legal and social grade of the Order of the Coif. Until a comparatively modern time no questions ever arose on this subject, and the Serjeant-at-law, like the possessor of any other title of honour, noble or commoner, took place, rank and precedence according to a settled table,¹ and the *status et gradus servientis ad legem* always implied a legal and general position, and, unlike municipal or professional rank, not confined to some special locality or occasion, but, as the higher titles of honour, was indisputably permanent. In the language of Chief Justice Brooke,² "*serviens ad legem est nosme de dignite comme Chevalier*," etc., and it is *character indelibilis* ; no accession of honour or office, or remotion from them, takes away this dignity, but he remains a Serjeant still.

¹ See on this, *ante*, p. 37.

By 1 Edw. VI. c. 7, it is enacted (s. 3): "That albeit any demandant or plaintiff in any manner of action, bill or suit, shall fortune to be made or created a duke, archbishop, marquess, earl, viscount, baron, bishop, knight, justice of the one bench or the other, or *Serjeant-at-the-law*, depending the same action, bill or suit, yet no writ, action or suit shall, for such cause, in anywise be abatable or abated." And (s. 4), "That albeit any person or persons being justice of assize, or being in any other of the kings commission whatsoever, shall fortune to be made or created duke, archbishop, marquess, earl, viscount, baron, bishop, knight, justice of the one bench or the other, serjeant-at-law, or sheriff, yet he and they shall remain justice and commissioner, and have full power and authority to execute the same in like manner and form, as he or they might or ought to have done before the same."

² See Brooke's Abridgment, title Nosme 5, *ante*, p. 38.

The rules and regulations by which rank and precedence are settled in this country come to us from the common law, which has been at different periods expounded by the high officers to whom such power legally belongs, and in some cases the legislature has specially disposed of questions that have arisen on the subject.¹

Established
order of
precedence.

These rules, as we have seen, fix the proper place of every one from the duke downwards, and the position of the Serjeant-at-law in the social ladder comes above an esquire by office or otherwise, not having special rank conferred on him.² Serjeants-at-law are placed in the table of precedence above officers in the army and navy, even of the rank of Admiral or General, or a Commander of the Bath, etc., and the precedence of the wife of a Serjeant-at-law is as well established as that of the wives of the nobility or of Baronets or Knights.³

Questions gradually grew up in former times between the order of the Coif and Knights Bachelors, as to precedence. Serjeants-at-law being under obligation to discharge their duties in the Courts, were assumed to be

Question of
precedence
between
the Ser-
jeants-at-
law and
Knights.

¹ See 31 Hen. VIII. c. 10, how the Lords are to be placed.

² Serjeants are without controversie above esquiors, and never written or called esquiors, because that is drowned in the state of a Serjeant-at-law, beinge more worthy; whereof it followes that Serieants being above all that are Knight inferiors, they stand in equalitie with Knights, and therefore betweene them and Knights standinge in tearmes of equalitie with Knights, there is no other reason of precedencie but senioritie as it is betweene Knights amonge themselves. Memorial to James I. respecting Knighthood: see *post*, p. 267.

The designation of Esquire properly belongs to the younger sons of Peers, the eldest sons of Baronets, Knights, and Serjeants-at-law; to officers in H. M. S. designated in their commissions or patents, e.g. Justices of the Peace, officers in the Army and Navy, Queen's Counsel, and Barristers-at-law, etc.

³ See *ante*, p. 37.

exempt from liability to be made Knights; and Serjeant Rolfe in 1431 successfully resisted the attempt to compel him to receive knighthood,¹ and none of the degree of Serjeant-at-law were Knights before 1535, when Willoughby and Baldwin, the King's Serjeants-at-law, were knighted, and the record states that this was the first occasion when Serjeants-at-law had been so made.²

Exemption
of Ser-
jeants-at-
law from
obligation
to be
knighted.

The lavish distribution of titles of honour has ever been a practical evil, more especially when knighthood was made to serve as a source of revenue to the Crown. Those who could honourably escape the obligations imposed by custom generally claimed exemption, and the Serjeants of the Coif were among them. When knighthood became less burthensome and objectionable, Serjeants-at-law had no longer reason for refusing the honour. Other questions arose on this subject. It was from the first stated that a Serjeant-at-law being knighted did not thereby take precedence of other Serjeants,³ and it had been long a matter of dispute whether any Knights Bachelors took precedence of Serjeants-at-law.

Questions
arising
when
knighthood
was con-
ferred.

Formal
enquiry in
1161.

In 1611 this latter question was submitted to the Crown,⁴ but after some discussion the controversy came

¹ See Dugd. Orig. c. 51.

² Memorandum, quod Term. Trin. 26 Hen. VIII., Thomas Willoughby et Johannes Balwin Serjeant le Roy, furent faits Chivaliers et que nul tielz Serjeaunts devant fuere unq; faitz Chivaliers."—MS. of Clem. Spelman cited by Dugdale, Orig. cli. p. 137.

³ See *ante*, p. 37, and *post*, p. 267. And the reasons given in the Serjeant's memorial to James I. as to their precedence, one of which is that—

"If Serieants be made Knights, they doe not preceede or take place of any other Serieants, who are not knights, beinge their auncienes. And by the death of the late Queen's Mat^{ie} all the Judges were but Serieants until againe they were made Judges by the King's L^{res} Patents."

⁴ See Serjeant Manning's appendix to the report of the Serjeants' Case, 1840, p. 263, where the following petition to the Crown and answer are set out:—

Question of Precedence between Serjeants and Knights.

to an end, leaving the relative position of the Knight and the Serjeant-at-law exactly where it was,¹ both James I. and Charles I. apparently taking advantage of

To our most Gracious Sovereigne Lord, James, by the Grace of God, of England, Scotland, France, and Ireland, Kinge.

The humble peticon of the Surieant at Lawe.

Humbly beseecheth your Highness your supplyants, the Serieants at Lawe, That where there is some difference and question of precedence and place betwixt your supplyants in their degree of Serjeants at Lawe, and such Knights as have been made since they were called to be Serieants by Your Highness; and the rather, for that the degree of Knighthood is bestowed upon divers Utter Barristers and professors of the Lawe. And whereaa, Your supplyants have been Suitors to Your Highness honourable Commissioners for causes determinable in the Earle Marshall's Court, for the determinacon of the same; but as it seemeth, they are not like to receive any resolucon there by reason of the difficultie and consequence thereof without some direcon from Your Majtie. in beinge pleased to signifie Your Royale opinion what Your Highnesse shall thinke convenient to bee done in a cause of this nature:

Their humble suit is, That Your Highnesse would be graciouslie pleased, for the avoiding of further inconveniencies, which are like hereby to the p'judice of Yo^r Mat^{ies} publique service in all Your Highnes Counties of the Realme of England, to consider of the Reaasons here within written, and to vouchsafe to deliver Your Mat^{ies} opinion, or to give such order or direction to Your Mat^{ies} said Commissioners therein, as in Your princelie Wisedome shall be thought fitt and convenient; and Yo^r supplyants will hold themselves well satisfied with whatsoever Yo^r Highness shall determyne therein, and dailie prey for Yo^r Majesties longe and prosperouse Raigne over us.

At the Court of Royston, the 20th of October, Anno 1611, the King's Mat^{ie} beinge well pleased, that the Serieants at Lawe shoulde retayne their right and ancient reputacon doth appointe some of the peticoners to attend the saide Lord Commissioners with this peticon, not doubtinge but that their Lordshipps will either determyne this controversie or acquaint His Mat^{ie} with the difficulties; whereupon His Highnes may declare His Royal pleasure therein.

Rog. Wilbrahem.

¹ In the 1 Edw. VI. c. 7, referred to *ante*, p. 264, Knights are placed not only before Serjeants, but before Justices of the one Bench and the other.

James I. seems to have made money by the creation of Serjeants, the fifteen Serjeants called in 1623 having paid the King £500 a-piece: see Foss's Judges and Serjeants, vol. vi. p. 31, and 'Judges of England,' tit. Sir John Branston quoting the learned Judge's autobiography, where his acquittance from the King for the £500 is referred to.

It was made a charge against Charles I. that he exacted money from the newly-made Serjeants.

the opportunity to exact heavy contributions on both the one and the other.

Limited
number of
the order.

It is remarkable that the Order of the Coif never included but a small number.¹ Not only were the Judges appointed few in number, but the order itself, from which the Bench and the Bar exclusively came, was always restricted—the whole number seldom exceeding forty or forty-five, a fact free from doubt, though there is no authentic list of Serjeants' writs before the time of Edward II.

Tables and
lists of
Serjeants
and Judges
of the Coif.

In the table of Serjeants of the Coif already given in this work there will be recognised the names of men fully bearing out the description in our Introduction. Many at least of the "most honoured names in English history, not only Judges, Jurists, learned writers, great advocates, and men who rose to the highest position in the State; members of the Legislature, Cabinet Ministers, occupants of the woolsack, and the Speaker's chair."²

Distin-
guished
members
of the
order.

There have sprung from lawyers in this list the families of not a few of the noble and honoured in this country.

The 'grandeur of the law.'

Fortescue, Coke, and Dugdale, each in his own way, bear testimony to what more modern writers have designated the "Grandeur of the law." Sir John Fortescue,³

¹ In the reign of Henry VIII. the number of members of the Order of the Coif was only thirty-three, whether Judges or Pleaders; and at that time the old rule was strictly followed of choosing the Judges from the *practising Serjeants*: and, as may be remembered, there were not till a century afterwards, any *King's Counsel*, except the King's Serjeants and the Attorney- and Solicitor-General. In the reign of George IV. the whole number of the Judges and Serjeants was forty, whilst twenty-six *King's Counsel* only were appointed during the whole reign.

During the reign of William IV. the addition to the Coif was by Judges only, whilst fifty new *King's Counsel* were added to the list.

² See *ante*, page 4.

³ De Laud. Leg. Angl., ch. 51, p. 123.

in speaking of the Judges, says: "It has been observed as an especial dispensation of Providence that they have been happy in leaving behind them immediate descendants in a right line, 'thus is the man blessed that feareth the Lord'; and I think it no less a peculiar blessing—that from amongst the Judges and their offspring more peers and great men of the realm have risen than from any other profession or estate of men whatsoever who have rendered themselves wealthy, illustrious, and noble by their own application, parts and industry." Dugdale's *Chron. series* sets out in order of time during four centuries¹ the names of Judges and Serjeants in the service of the Crown, and he gives us a reason for this in his Preface, that it might shew what eminent lawyers were contemporaries and pupils, how so many great and noble families originated with the Order of the Coif, "be seen how the most famous men for knowledge in our laws stood contemporary,² through all ages since the Norman Conquest,

¹ 1 Edw. I. to 11 Car. I.

² 'Or at least be much advanced by such their ancestors, whose rise was from this excellent study and profession: and lastly to rectify those common and ordinary mistakes, which pass for good and current amongst divers young students; who, finding in the Year-books frequent authorities for opinions; either do take all of them to be Judges of old, or, at least, are not able to distinguish between the Judge and the Pleader, and not only so; but which is worse: viz., in not being well acquainted with the true names of the Judges; and principal lawyers of those times, do take those abbreviations of their names, there found, to be their very genuine and proper appellations. Id est Mutt. for Mutford; Shard. for Shardelowe; Scorb. for Scorburch; Aldeb. for Aldeburgh; Malb. for Malberthorpe; Hepp. for Heppescotes; Cant. for Cantebrigge; Loved. for Loveday; Trev. for Trevanignon; Parn. for Parning; Stouff. for Stouford; Bauk. for Baukewell; Kelf. for Kelleshill; Scott. for Scotere; Sad. for Sadington; Hill for Hillarie; Toud. for Toudeby; Frisk. for Friskeny, with the like: by which means, not only their right and true names; but consequently their so well and deserving memorie (whereunto much honour is due) is utterly buried in the depth of oblivion.—Dug. Orig., Preface.'

partly also what great and noble families (as well of those which are gone out in heirs female or otherwise as such who still continue) have sprung from those roots."

Grandeur
of the law.

In a work entitled 'The Grandeur of the Law,' published in 1684, is a list of great families owing their position to their founder's success in the legal profession; we have further information in Mr. Foss's work published in 1843,¹ under the same title.² The Dukes of Norfolk and Devonshire, as well as the Dukes of Montague and Manchester, the Marquises of Winchester, Townsend and Camden, the Earls of Guilford, Buckinghamshire, Sandwich, Winchelsea, Cadogan, with a very large number of other Peers, all derive title from Serjeants-at-law, and the list which we have already given contains the names of the founders of their families.

Serjeant
Howard,
temp.
Edw. I.

The ancestors of "*all the Howards*" was the *William Howard* or *Haward* appearing in our table as a Serjeant of the law of the time of Edward I., and who "often hadde ben at the parvis" and stood by his client at the Bar of the Common Bench, and, like the learned brother described by Chaucer,

"Justice he was ful often in assise;
By patent, and by pleine commissiun;"³

for the records expressly mention him,⁴ and he rose to be one of the regular Judges of the Aula Regia, having a seat on the *Common Bench* from 1297 to 1309.⁵ And

¹ 'Grandeur of the Law,' H. Philips.

² 'The Grandeur of the Law, or the Legal Peers of England,' by Edward Foss, Esq., F.S.A. London, Spettigue, 1843.

³ *Ante*, p. 3.

⁴ See claus. Ebor. Northumberl., etc., 1293, cited in Dugd. Chron. ser. 31.

⁵ See Liberatæ 27 Edw. I. (2 claus. 1 Edw. II., in dorso m. 19, cited Dugd. Chron. series 34).

William Howard appears from the Rolls of Parliament ¹ William Howard. to have attended like the other Judges and Serjeants in aid of the Legislature to act as one of the *Triers and Receivers of Petitions*, but the statement that he was Chief Justice of England appears more than questionable.

The ancestors of Serjeant and Justice Howard, as the *Howard Memorials* ² tell us, were of honourable but not noble pedigree; his lineal descendants became Dukes of Norfolk, ³ and in the present House of Peers the line of

Descendants of Serjeant Howard.

¹ 1 Rot. Parl. 178, 218.

In 1308 the names of the Justiciarii in Banco appear as Rad. de Henghem, Will. Haward, and three others. Claus. 1 Edw. II. in dorso m. 19. The inscription on the portrait of Serjeant and Justice Howard in Long Melford Church, already referred to (*ante*, p. 18), is said to have described him as in a higher grade "orate p. a. Gulmi. Howard Cheff Justis of England;" but inasmuch as in 1308, he was clearly only a puisne Judge, Ralph de Henghem being Chief Justice, and Sir William Howard died in 1308 whereas the memorial in Long Melford was erected nearly a century afterwards the statement about *Cheff Justisse* is clearly a mistake. This inscription is said to have been in existence as late as 1688, but is now lost. The portrait of this Sir William Howard is engraved in the privately printed memorials of the Howards edited by the late Mr. Howard of Corby. Long Melford Church was restored circa 1450-95, the painted glass windows being filled with portraits of the family and kinsfolk of John Clopton of Kentwell Hill, the Squire of Long Melford whose family intermarried with the Howards. When Dugdale wrote, the three figures referred to, *ante*, p. 18, were placed together; but many years ago Howard and Pygot were placed together in the east window, and Serjeant Hough in the south-west window, as they are now, no trace of the words *Cheff Justisse* being visible.

² In this work, prepared and privately printed by Mr. Henry Howard of Corby Castle, Ap. XL., they are described as "what we should call" private gentlemen of small estate, probably of Saxon origin, living at home, intermarrying with their neighbours, and witnessing each other's deeds of conveyance and contracts.

³ Sir Robert Howard, the lineal descendant of the Judge, married Margaret, the daughter of Thomas Mowbray, Duke of Norfolk and co-heir of John Mowbray, fourth Duke. Their son, John Howard, was summoned to Parliament as Baron Howard by Edw. IV. in 1470, and was created Earl Marshall and Duke of Norfolk by Rich. III. in 1485, being the famous Jockey of Norfolk mentioned by Shakespeare.

Howard is represented by the Earldom of Suffolk and the Earldoms of Carlisle and Effingham, and the barony of Howard of Walden; and from the same stock came several other peerages now extinct.¹ And the intermarriages of members of this noble line have connected it with the best and highest in the land.

Descendants of
Serjeant
Cavendish.

The name of another famous Brother of the Coif belongs to the English peerage and the history of our country—John de Cavendish,² who in the time of Edward III. is mentioned in the Year-books as a practising Serjeant Counter, and rose to be Chief Justice of England, and fell by the lawless hands of the rebels.³

His descendants were ennobled long after his death;⁴ two Dukedoms with numerous other titles fell to their lot, and the lineage of many noble families come through the good blood of John de Cavendish *servientem ad*

¹ E.g., The Viscounty of Bindon, 1559 to 1619. The Earldom of Nottingham, 1597 to 1681. The Earldom of Northampton, 1604 to 1614. Barony of Howard of Escrick, 1628 to 1714. The Earldom of Norwich, 1672 to 1777. The Earldom of Stafford, 1688 to 1762. Earldom of Bindon, 1706 to 1722.

² The name of John de Caundish or Cavendish appears in the Year-books as early as 21 Edw. III., 1347; his first appearance as a Judge was 40 Edw. III., when we find him mentioned in the Year-books as such, and in 50 Edw. III. we find a case in the Year-books where Caundish, Justice, in reference to a lady's age is made to say—"Il n'ad nul home en Engleterre que puy adjudge a droit deins age ou de plein age car ascun femes que sont de age de trent ans voient appeler d'age de 18 ans."—Year-book 50 Edw. III., fol. 6, pl. 12.

³ In the insurrection the venerable Judge fell into the hands of the rebels, who dragged him into the market-place of Bury St. Edmonds, and after a mock trial he was ruthlessly beheaded.

⁴ William Cavendish, great grandson of the Judge, who was gentleman usher and companion of Cardinal Wolsey, and wrote his life, was elevated to the peerage in 1605 as Baron Cavendish of Herdwicke, and made Earl of Devonshire in 1618, and in 1694 William, the fourth Earl, was made Marquis of Hartington and Duke of Devonshire. Another descendant of the Judge was in 1620 created Viscount Mansfield, to which title was afterwards added the Earldom, Marquisate, and Dukedom of Newcastle—all of which titles became extinct in 1691.



The true portraiture of Iudge Littleton the famous English Lawyer

legem. To enumerate all those among the upper classes in this country who can find the names of their ancestors in our list of Serjeants-at-law would be to take largely from the works of Burke and Debrett. The English peerages and baronetcies existing, dormant, or extinct, the pedigrees of our great commoners and landed gentry, and of the chief families of the United Kingdom include many of those names.

Other families belonging to the order.

Let us take two other names from the list of Brothers of the Coif, more regarded in the Law Courts than Howard or Cavendish—viz., Littleton and Coke—and we shall see how well they bear out the idea of the “grandeur of the law.”

Littleton and Coke.

Thomas Littleton practised as Serjeant Counter, wrote his famous law book, and sat on the Bench as a Justice in the fifteenth century;¹ and Coke,² the great commentator on Littleton, gained renown both as Judge and Serjeant, and exponent of the law a century afterwards, gaining distinction as *apprentice of the law*, *Recorder*, chief officer of the Crown, and Chief Justice of England,

¹ Thomas Littleton was called to the Coif in 1453, having been previously *Lector* of the Inner Temple; his public reading there on the Statute of Westminster, ‘de donis conditionalibus’ being especially commended. He practised as Serjeant Littleton until 1466, when he was made a Judge of the Common Bench.

² Coke was called to the Bar at the Inner Temple in 1578. In the next term his name appears in a case in the Queen’s Bench: see 4 Coke, Rep. 14. In 1585 he was chosen Recorder of Coventry, the next year of Norwich, and in 1591 of London. In 1592 he was made Solicitor-General, in the next year M.P. for Norfolk, being chosen Speaker of the House of Commons, and in April, 1594, he became Attorney-General, which office he held till June, 1606, when he was called to the Coif and made Chief Justice of the Common Pleas: see 2 Croke, Rep. 125; and in 1613 he was Chief Justice of the King’s Bench, being, three years after, like so many other Judges, dismissed from office. After leaving the Bench he returned to the Bar, like Hale, as a Serjeant-at-law. In Parliament, during the seven years that he was member, afterwards, his status et gradus servientis ad legem was always respected.

and then going back and gaining still more legal renown as Serjeant and lawyer both at Westminster Hall and in Parliament.

Both the families of Littleton and Coke were, like those of Howard and Cavendish, ennobled; not merely one, but various titles of honour were bestowed on their descendants.

Lineage of
other de-
scendants
of Little-
ton.

From Thomas Lyttleton¹ came not only the Lord Lyttletons of Frankley, but the Lords Hatherton, as well as Lord Lyttelton of Mounslow, whose peerage died with him in 1646: and directly descended from the famous lawyer and Serjeant,² came the Lords Lilford, taking their family name, Littleton Powys, in part from Thomas Lyttelton, and in part from their ancestors, the Powys, one of whom, Thomas Powys, was also a Brother of the Coif (created Serjeant-at-law in 1669).³

Descend-
ants of
Coke.

The descendants of Coke as well as of Littleton were destined to belong to the nobility. Sir Thomas Coke of

¹ Thomas Lyttelton, grandson of John Lyttelton of Frankley, married Elizabeth, the daughter and co-heir of Sir Gilbert Talbot, and granddaughter maternally of John of Gaunt, and his immediate descendants were Knights and M.P.'s for the county of Worcester. Sir Thomas Lyttelton in July, 1618, being created a Baronet, and the fifth Baronet in succession, Sir George Lyttelton, was in 1757 made Baron Lyttelton of Frankley. This peerage expired in 1779. The present peer was created in 1794.

² The descendants of Edward Littleton, the grandson of the Serjeant, were Knights and M.P.'s for Staffordshire. The first descendant was created Baronet 1627, and the Baronetcy expiring, the heir and representative of the family was created Lord Hatherton.

³ See on this Burke's Peerage, title Lilford. The Powys family trace back to the Coif. Thomas Powys, who was Reader of Lincoln's Inn in 1667, and made Serjeant-at-law in 1669, was descended from the Princes of Powysland through the Barons of Main-ynmceifod; he married Ann, daughter of Sir A. Lyttelton, a descendant of the celebrated Littleton, and had two sons who were both Serjeants-at-law and Judges, viz., Sir Littleton Powys and Sir Thomas Powys, whose grandson Thomas was raised to the peerage as Baron Lilford in 1794.

Holkham, fourth in descent, was in 1728 made Baron Lovel, and afterwards Viscount Coke of Holkham, and Earl of Leicester, and these titles expiring in 1759, they were renewed in 1837 in the person of the well-known Thomas William Coke of Holkham, the seventh in descent from Sir Edward Coke, the famous lawyer, Serjeant, and Judge.

We have referred to Howard and Cavendish, Littleton and Coke, and we must not omit here the case of another famous Brother of the Coif, Sir John Fortescue, Serjeant-at-law, and Chief Justice under Henry VI., and memorable to us on account of his disquisition “*De laudibus legum Angliæ*,” and his earnest testimony therein “*de laudibus Servientum ad legem*.” Loyal to his Sovereign, to his profession, and his order, it was the lot of Sir John Fortescue to leave behind him a line of worthy representatives, whose alliances with the best families in this country are sufficiently recorded, the head of the house of Fortescue being admitted into the peerage. Sir Hugh Fortescue, ninth in descent from him, was created Baron Fortescue, whose grandson became Viscount Ebrington and Earl Fortescue.

The Fortescue family.

It would be altogether going beyond the limits of this work if we specified all the honoured descendants of those in our list of Judges and Serjeants of the Coif. It must suffice to say that whilst so many with just cause are proud of that distinction and of seeing in their ancestors a part of *the Grandeur of the Law*, it is difficult to imagine even the most “studious of genealogical advantages,” thinking it a discredit to find his ancestor in our list and to look back to a Serjeant-at-law as the founder of the family.

Numerous pedigrees through Serjeants-at-law.

Gradual innovations.

The damage to the Order of the Coif has for the most

part been brought about by very irregular, if not sinister, contrivances. The Order of the Coif stood its ground for more than five centuries against all kinds of open adversaries and systematic plans for its injury, or destruction, but it was for the most part defenceless against assailants actuated by merely personal considerations and working at the same time in Westminster Hall and St. Stephen's, and hardly pretending that their innovations were for the public good. If the time-honoured institution of the Coif has really received its death-blow, it has come after long-continued ill-usage.

Appoint-
ment of
Judges for
Wales.

As early as 1542, a departure was made from the rule requiring the Judges of the superior Courts to be taken from the Serjeants-at-law. The Judges for the *Welsh Circuits* being by the statute then passed¹ not required to have the qualification of the Coif like the Judges of Westminster Hall, and though we find these Welsh Judges cried up by that great innovator Bacon,² yet their appointments seem to have been made the especial subject of improper arrangement and abuse.³

¹ See 34 & 35 Hen. VIII. c. 26.

² "The Judges of the four circuits in Wales, though they are not of the first magnitude nor need be of the Coif, yet are they considerable."—Bacon's advice to Villiers.

³ An appointment to a Welsh Judgeship, with another patent to be one of the King's Counsel extraordinary, seems during all the last century to have been commonly given away to briefless barristers having a seat in Parliament, or relations of parliamentary influence. In the list of Justices of the Grand Sessions in Wales for 1785, we find eight names, three of them, Sir R. P. Arden and A. Macdonald and Serjeant Williams, being men of position, the other five having no position, except the nominal rank of K.C. In 1800, of the eight Welsh Judges, James Mansfield and Thomas Manners Sutton only had any position at the English Bar; in both lists will be found the name of the Hon. Daines Barrington, to whom we have several times referred, who though he made a very poor figure in the legal profession, was successively promoted to be one of the King's Counsel and a Welsh Judge, which appointments he kept till his death in 1800. Though not celebrated as a lawyer, Mr. Barrington is known by

The Welsh Judgeships were only put an end to in 1830;¹ the old Judges of the Principalities being in the habit of occasionally attending as barristers in Westminster Hall where they were treated, according to all accounts, with anything but deference by some of the Bar who attended the old Courts of Great Sessions.²

The Welsh Judges abolished.

Like the Judges of the Principality of Wales, the Barons of the Exchequer were, as a rule, not of the state and degree of the Coif, and were excluded from the table of precedence of Henry VIII., which specially recognised the rank of Judges and Serjeants-at-law,³ and were disqualified from *riding the circuit* or otherwise exercising full judicial authority like the Judges and Serjeants of the Coif.⁴

Baron of the Exchequer not of the Coif.

They were sometimes holders of other offices in the Exchequer. They continued in their original Inn of Court after becoming Barons, and held an inferior grade to the Judges of *the one bench or the other* and the Serjeants-at-law.

Serjeant Shute, who was called to the Coif in 1577, was the first Serjeant who was raised to the Bench of the Exchequer as Puisne Baron, and in his patent it is ordered that he shall be reputed and be of the same order, rank, estimation, dignity and pre-eminence to all

Serjeant Shute, the first of the order made a Puisne Baron.

a number of literary productions of not a very high character, already referred to, and enjoyed several other Government appointments, including the Commissioner of Stores at Gibraltar, which he also retained to his death.

¹ 11 Geo. IV. and 1 Wm. IV.

² Some of Maule's sly flings in Westminster Hall at Mr. Nolan, then a briefless Barrister, resting his reputation upon his book on Poor Laws, but in Brecon, Glamorganshire and Radnor one of the Judges of assize, served greatly to amuse the Bar.

³ 31 Hen. VIII. c. 10, *ante*, p. 265.

⁴ See *ante*, p. 99.

intents and purposes as any Puisne Judge of either of the two other Courts.¹

The seventeenth century certainly witnessed enough of legal changes in this country. We then find the system established of making the apprentice of the law to be Serjeant and Judge *uno saltu*. The first instance of this occurred in 1572, when Robert Monson was so appointed by Queen Elizabeth;² but the practice was afterwards gradually adopted in Westminster Hall, though it gave rise to several legal objections.

A Ser-
jeant's
writ and
Judge's
patent of
same date.

Changes in
the Circuit
Commis-
sions.

In 1850 the old law was further relaxed in the case of the Circuit Commissions. By the provisions of *Magna Charta* and the Act of Edw. III.³ the assizes could only be taken before a Judge or Serjeant of the Coif; by the Act of 1850⁴ the commissions might be directed to Queen's Counsel not being of the rank of the Coif, and so the law remained until the passing of the Judicature Acts, when the further innovation was introduced of allowing all the Judges to be appointed without being or having been Serjeants-at-law.⁵

Innova-
tion by the
Judicature
Acts.

Gradual
innovation
as to
patents as
King's
Counsel.

We have already referred⁶ to the innovations of the seventeenth century with regard to precedence and pre-audience at the Bar; how Francis Bacon obtained an appointment from Queen Elizabeth, her Counsel extraordinary, without fee or reward, and with no definite

¹ See p. 265.

² Robert Monson was in Michaelmas term 1572 elected Serjeant-at-law per speciale mandatum Reginae. *Cod. niger Hosp. Linc.* 14 Elizabeth, and on 31st October of the same Michaelmas term he was made Judge of the Common Pleas, see *Pat.* 14 Eliz. 8. See *Dug. Chron.* ser. 96.

This Judge did not remain long on the Bench. He seems to have given offence to the Crown, and had to change his seat on the Bench for less comfortable quarters in the Tower. See on this Foss's *Judges of England*, p. 448.

³ 14 Edw. III. c. 16.

⁵ 36 & 37 Vict. c. 66, s. 8.

⁴ See *ante*, p. 99.

⁶ See *ante*, p. 194.

duties devolving upon him—how in 1607 he managed on the faith of this to get from James I. a second express patent as King's Counsel with a fixed salary—how in 1668 Francis North contrived to get a similar appointment from Charles II., and how after many other unimportant patents of the same character had been made, the practice grew up of appointing a large staff of King's Counsel who were only nominally so.¹

A further innovation more anomalous in its character was made in the last century by the introduction of patents of precedence to those who were not Counsel for the Crown. Lord Mansfield is usually stated as the author of this innovation, and when Lord Eldon had obtained a good position at the Bar he succeeded in getting Lord Thurlow to direct letters patent of precedence to himself as well as to Erskine and Pigott in such order as to give Scott the advantage.²

Patents of precedence.

The full history of the office of King's Counsel, of the *batches* made by Lord Eldon when on the woolsack, of the partial distribution of patents among the Bar during this time have caused great dissatisfaction.

The appointments of Queen's Counsel have now become so numerous that the rule of precedence and preaudience at the Bar constitutes a mere anomaly, producing public inconvenience and destroying the old distinction of pre-eminence at the Bar, whilst the old and legitimate Order of the Coif is being destroyed.

Number of patents as Queen's Counsel.

The various patents fix their precise order at the date of the patents; and in addition to the wrong thereby done to the body of Serjeants whose precedence and preaudience were by such patents from time to time shifted and made to come after the newly appointed

Many inconveniences of these.

¹ See *ante*, p. 201.

² See *ante*, p. 203.

Queen's Counsel: there is this other inconvenience, that the order of precedence and preaudience in the Law Courts is incessantly disturbed. Even the Attorney- and Solicitor-General, who when in office hold the highest place at the Bar, have on going out of office to go back to their former place, taking their place below the Queen's Counsel whose *patents of appointment* date previous to theirs.¹

Growing innovations by means of concessions from the Crown.

In the intrusions on the position of the Serjeants-at-law up to the middle of the last century we trace only the ordinary course of professional competition, and of attempts on the part of the junior barristers to usurp the places of their seniors. The old privileges of the Serjeants-at-law at Westminster Hall stood in the way of ordinary barristers, and not infrequent attempts were made to encroach on these privileges. We have referred² to what took place in the previous century, and up to the time to which we are now referring there was no serious innovation on the position of the Serjeants; the number of the King's Counsel extraordinary was very small, and most of these were officially engaged elsewhere than in Westminster Hall; and in the Court of Common Pleas the Serjeants alone were entitled to practise. Attempts were, however, very deliberately made to take away the Serjeants' privileges. In 1755 such a plan was taken in hand by Chief Justice Willes, but all the Judges at Westminster Hall and the best of the Bar set their faces against this plan. Exactly half a century ago, however, the same scheme was revived.

Changes in Court of Common Pleas.

Justice Willes' attempt in 1755.

Course of proceedings in 1834.

It was the period of extensive law reforms; the position of the Serjeants had been brought under the notice of the Common Law Commissioners, and they

¹ See *ante*, p. 203.

² See *ante*, p. 103.

had reported that the institution of the Serjeants was essentially a good one, and that even their exclusive practice in the Court of Common Pleas worked for the public advantage. Attempts, however, had been made by the law officers of the Crown to take away the Serjeants' privileges by express special legislative provision, clauses for that purpose were inserted in several bills submitted to the Legislature, which otherwise had nothing to do with either the Serjeants or the Court of Common Pleas.¹

In April, 1834, however, the more deliberate plan already referred to was adopted, by which it was attempted to destroy the position of the Serjeants by a mere mandate from the Crown, without the sanction of Parliament. Sir John Campbell who had become Attorney-General without securing his seat in Parliament, caused the mandate in question to be suddenly issued; and for the time obedience was paid to it by the Judges of the Court of Common Pleas, but after giving full time for considering the character of the mandate the Serjeants brought the matter before the Privy Council, it being already shown that the benefit of the greater despatch of business expected to accrue to the public from the alteration had not been realized. The *mandate*, as we have seen, was entirely deficient in the proper form and solemnities necessary to give it legal effect,² merely bearing the King's sign manual; and without any counter-signature or any mark of its having passed through any public office of registry it was made

The mand-
date of
April,
1834.

¹ See *ante*, p. 105.

² 2 Instit. 555, 6 (Artic. super chartas), ib. 186; Vin. Ab., Prerogative (F. b.) (G. b.), pl. 10; Com. Dig. Patent A. B. C. 7.—Attorney-General v. Vernon and others, 1st Vernon's Reports, 370, 391; Vernon v. Benson, 9 Mod. 47; 2 Black. Com. 346; 27 Hen. VIII. c. 11.

public, without the apparent sanction of the ordinary responsible law officers of the Crown. After long discussion before the Privy Council 'it was abandoned as illegal, and in Michaelmas Term, 1839, the Court of Common Pleas, after a very able argument from Serjeant Wilde on behalf of the Serjeants, decided that the ancient practice of the Court should be revived, and that the privileges of the Serjeants should remain intact.

Lord
Campbell's
disparage-
ment of
the Coif.

This illegal attempt to do away with the Serjeants-at-law was thus entirely defeated, and the animus exhibited by its promoters was very great. In the attempt previously made (eighty years before), by Chief Justice Willes to effect the same object¹ by legal means, there was no disguising the fact that the real object was *to destroy* altogether the ancient Order of the Coif. The proceedings to which we have just now referred were taken when the Attorney-General who promoted them was, for some unexplained reason, personally inimical to the old order. Sir John Campbell appears in his writings, as well as in his official proceedings, to have been actuated by a strong feeling of dislike to the Order of the Coif; his misrepresentations and misstatements with reference to the old order are sufficiently shewn. Over and over again Judges referred to in his books who were practising Serjeants are deliberately stigmatised without any reason; and even the famous old Serjeant Maynard,² who practised with so much honour

¹ See *ante*, p. 104.

² John Maynard was called to the Bar in 1626, made Benchet of the Temple in 1648, called to the degree of the Coif in 1654, made Serjeant of the Commonwealth, 1658, appointed King's Serjeant at the Restoration; and being present with the peers, prelates, and lawyers at the Privy Council on the arrival of the Prince of Orange, the Prince is said to have observed "that he had outlived all the men of law of his time," when he answered that he had liked to have outlived the law itself if his Highness

and credit during the time of the Commonwealth and after the Restoration, is held up to public censure by Lord Campbell, for conduct of which there is not a particle of proof.

Very great Judges in recent times, who were only made Serjeants at law in order to qualify them for the Bench, have expressed themselves in very different terms with regard to the old order. Denman, Cockburn, Pollock, and Erle, all concurred in the opinion that it would be most injudicious to destroy the old Order of the Coif; and even now, when recent legislation has gone so far in this direction, there is still a strong feeling existing both among the Judges and the Bar that the order should not be put an end to by indirect, any more than by direct, means. If there are any regulations which interfere directly or indirectly with the continuance of the old order, would it not be better that these regulations should be altered than that the ancient institution of the Coif should be altogether destroyed?

Regard for the old order by the highest Judges on the Bench.

It is quite clear that but for innovations of very recent growth the dignity of the Coif would still be a great object of ambition to the Bar in England. Such innovations stand directly in the way of those who would

Order would at once revive if modern innovations dealt with.

had not come over. Maynard was First Commissioner of the Great Seal, but Lord Campbell chose to disparage him. The statement made by Campbell, that acting under the authority of the Commonwealth with Sir Harry Vane, he took part afterwards in Vane's trial, is, as Mr. Foss points out, entirely without foundation, since Maynard's name does not appear in it. Maynard, even in his old age, was more than a match for ill-disposed Judges. When Judge Jeffries, who had availed himself fully of his great legal knowledge, remarked that Maynard's argument against his own judicial dictum was bad, and that he "had grown so old as to forget his law," retorted, "'Tis true, Sir George. I have forgotten more law than you ever knew."—Woolrych's Jeffries, p. 81.

otherwise gladly accept the rank of Serjeant-at-law. That old rank and position would still be sought after if it had the same just advantages as it formerly brought.

Observations in
'Edinburgh
Review.'

As observed in the 'Edinburgh Review,' "In the legal profession at present there is really after all but an insufficient substitute for the old honour of the Coif. High office can fall to the lot of but a few among the immense crowd struggling for fame and position at the Bar. The distinction of mere successful practice is inevitably evanescent, and it can hardly be said that to become merely *one of a staff of two hundred Queen's Counsel* is at this day a sufficient inducement for a sacrifice of any substantial advantages."¹

The rank
of Ser-
jeant-at-
law in
Ireland.

Serjeants
should no
longer be
subject to
their posi-
tion being
taken away
by special
patents.

In Ireland far more respect is paid to the ancient rank. The Serjeants-at-law there rank above all the Queen's Counsel, and occupy a position which is the object of ambition to the whole Bar. If the members of the old Order in England were not subject to have their legitimate place disturbed by incessant appointments of new Queen's Counsel with patents of precedence, this would be the case also in England. It would be easy to make regulations to rectify the present anomalous state of things, by which the Serjeants-at-law are subject to incessant change of position under incessant new patents conceded by the Crown. Even those who have held the high offices of Attorney- and Solicitor-General go back on a change of ministry to the position *which their patents as Queen's Counsel* originally conferred upon them.²

¹ See 'Edin. Rev.' Vol. 146, No. 300, p. 454.

² There are few members of the profession who cannot call to mind occasions, where the change of ministry or other accident causing the ex Attorney-General or ex Solicitor-General as law officers to change

The Order of the Coif came into existence before the oldest title in the English peerage,¹ and centuries before any order conferring a title of honour was in existence in England.² Though new orders of distinction have been created in modern times in very rare instances, and new titles of honour conferred,³ yet it has not happened that any such order or title of honour has been put an end to by Parliament, by Royal command or otherwise, Is it right that the old Order of the Coif, the honoured rank of our Common Law, is to have such a fate? There is as much need of a permanent distinction being conferred on the deserving and eminent in the legal profession as in the Army or Navy, or otherwise in the service of the State. In answer to a question put to the Lord Chancellor in the Parliamentary Session of 1877, he answered *that there was nothing to prevent the Crown from creating new Serjeants if it were thought expedient to confer the honour and there are members of the Bar who desire that rank.*

No order conferring a title of honour has been yet abolished.

Statement as to Serjeants made on passing the Judicature Acts.

This answer leaves a substantial question open: Is it expedient that the highest grade at the Bar known to our Common Law should be swept away?

their rank, inconvenience has not been produced even in pending proceedings. Perhaps the most memorable instance of such derangement of the order of seniority was that of Lord Denman and Lord Brougham: Holding the places of Attorney- and Solicitor-General to Queen Caroline, they both lost that position by her death, and then had to go back to the Bar with the position below all Queen's Counsel of the day (indisputably their inferiors in every way), and were, as we have seen, even refused patents of precedence to prevent others of their juniors jumping over their heads.

¹ The first Duke was created in 1388, the first Marquis in 1385.

² E.g., the Order of the Garter dates back to 1330, of the Bath to 1399.

³ The rank of Viscount was first used in 1440. The order of Baronets was instituted by James I., and the various orders relating to the Indian Empire, by Her Most Gracious Majesty Queen Victoria.

As matters now stand, there is small inducement to apply for the Coif. Shorn of its old advantages, there is a positive discouragement to those who would otherwise desire to take this rank. There can be no question about it, that the old *status et gradus* of Serjeant-at-law would still be preferred if it had the same just advantages as it formerly brought.

Settled
order of
precedence
desirable.

The remedy for all this is very easy. Let it be provided that Serjeants and Queen's Counsel generally shall stand on an equal footing with regard to seniority, but that those who have held the high appointments of Attorney- or Solicitor-General shall, on quitting office, rank as *Queen's Serjeants* with all the honour and position belonging to that appointment.

We want at the English Bar some settled rule and order of precedence and preaudience now established, to put an end to increasing anomalies and irregularities. The change would conduce as well to the advantage of the Bar and the legal profession generally, as to the suitors and the public; and this reform would at the same time prevent the evil of abolishing one of the most venerable institutions of our ancient Common Law.

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